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BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:	:	
WILLIAMSON TRANSPORT CO., INC.	:	**Docket No. FMCSA-2003-16485** – 6
Respondent	:	

RESPONDENT'S REBUTTAL TO AGENCY'S RESPONSE TO PETITION FOR REVIEW OF UNSATISFACTORY SAFETY RATING

COMES NOW, Williamson Transport Co., Inc. (hereinafter "Respondent") and submits this rebuttal to the Agency's Response to Petition for Review of Unsatisfactory Safety Rating. This matter is before the Chief Safety Officer because of a contested unsatisfactory safety rating proposed by the Federal Motor Carrier Safety Administration (hereinafter "Agency" or "FMCSA").

Respondent filed a timely Petition for Review with the Chief Safety Officer on November 6, 2003, pursuant to 49 C.F.R. § 385.15. Specifically, this matter arises from a flawed compliance review completed on October 16, 2003. and resulted in the Agency's proposing an unsatisfactory safety rating for Respondent's operation, which will become final on December 22, 2003. However, by Order, the Chief Safety Officer has stayed the effective date of the final safety rating until such time as he reaches a decision in this matter.[1]

[1] *See* Chief Safety Officer by Order dated November 21, 2003.

To put it mildly, Respondent is outraged by the most recent disclosures made by the Agency with regard to this case. Evidence relied upon by the Agency to support its actions were never disclosed to the motor carrier or its counsel, despite a direct request. Investigator's accusations claiming carrier officials and its agents concealed records/documents are bold-faced misrepresentations and are offensive to these officials. Consequently, Respondent challenges aggressively the proposed unsatisfactory safety rating on the grounds that Agency employees acted arbitrarily, capriciously, and in an unprofessional manner. Respondent asserts that these acts were outside of Agency policies and procedures, and the Agency's conclusions were pre-determined to support a the notion that Williamson Transport Co and Williamson Produce Co. were the same company under a legal theory of "substantial continuity." Further, Respondent asserts that investigators improperly denied them rights and protection afforded under Fourth and Fifth Amendments to the U.S. Constitution as well as other protections in statutory and procedural law—all in violation of 5 U.S.C. §§ 706 (2) (A), (B), (C), (D). *See Citizens to Preserve Overton Park, Inc., et al. V. Volpe*, 401 U.S. 402, 413-414, 91 S. Ct. 814, 28 LEd.2d 136 (1971).

I. RELEVANT FACTS AND TROUBLING QUESTIONS

The facts in this case show that Williamson Transport Co., Inc. is a bona fide corporate entity created under the laws of North Carolina, effective May 19, 2003. As a new corporate entity, Respondent filed for an employer identification number from the Internal Revenue Service, which was assigned on May 22, 2003. On May 19, 2003, Respondent filed an MC-150 form and application to the FMCSA for a DOT Number, which was approved and a DOT number assigned on May 21, 2003 (Maynor First Affidavit ¶¶ 1-10).

The FMCSA approved Respondent's application and acknowledged it was a new entrant motor carrier and that it would be subject to a "safety audit" within an 18-month period. Consistent with federal requirements, Respondent obtained insurance coverage effective on June 6, 2003. On July 1, 2003, Respondent entered into a lease arrangement with Williamson Produce for the use of their equipment owned and operated prior to their relinquishing all rights of operation as a motor carrier on June 15, 2003. Respondent filed all applications and disclosures to the Agency consistent with its requirements, and the Agency with full knowledge processed and approved each without question or reservation from any Agency official.

On August 7, 2003, in Emporia, Virginia, Respondent's driver and leased CMV was involved in a fatal accident. Virginia State Police investigated the accident and cited the CMV driver with traffic infractions. The post crash Driver/Vehicle Examination Report also cited Respondent with violations of the FMCSRs. These alleged accident citations and regulatory charges are being contested in another forum, and therefore are not relevant to this proceeding other than to serve as the basis for the compliance review on Williamson Transport's operation and not Williamson Produce. On September 10, 2003, Respondent was notified by the FMCSA of its intent to complete a compliance review instead of a safety audit, a procedure not normally performed on a new-entrant motor carrier. At the time of the review, Respondent was a 25-truck operation with 4 office employees. Company doors were open for only 3 months, and its trucks had run approximately 750,000 miles, generating freight revenue in the neighborhood of $555,000 (Maynor Second Affidavit ¶ 7).

The Virginia State Patrol in its accident report incorrectly cited Williamson Produce Inc. d/b/a/ Williamson Trucking Co. (US DOT # 90896, MC # 124896) as the

motor carrier involved in the crash because of the erroneous markings on the side of the truck. The motor carrier involved in the accident should have been recorded as Williamson Transport Co. Inc (US DOT # 1131263, MC # 460974). Based on this error, the NC Division Office developed the preconceived notion that these two companies were one and the same. Thus, the Agency embarked on a path to prove this fact by whatever means.

Obviously, Williamson Transport Co. did not do "due diligence" in getting the markings on their leased CMVs changed with correct company information as the regulations require in 49 C.F.R. § 390.21. The demands on a small company are huge, and priorities are sometimes dictated by events outside the control of the motor carrier (Maynor Second Affidavit ¶ 6). However, this infraction is not an acute or critical violation of the FMCSRs, and, more importantly, investigators did not identify or report this infraction in the compliance review. Thus, it has no relevant bearing on this company's safety rating.

The NC Division Office knew or should have known that Williamson Produce Co. d/b/a Williamson Trucking Co. was no longer in the interstate trucking business and no longer subject to their jurisdiction, particularly since the Agency processed the deactivation of the Company and removed its DOT/MC numbers from SAFER. If the NC Division Office had doubts about this matter, it should have sought clarification from its headquarters office or directly from the respective company. Rather, the NC Division office chose to pursue their agenda that these two companies were one and the same based on an alleged conversation with Agency counsel (Scapellato Affidavit).

In Part C to the compliance review (*See* Agency Response Exhibit E)[2], the investigator states the reasons why he concluded that the two North Carolina companies are one and the same: same management, employees, address, drivers, etc—reasons that parallel almost verbatim the legal arguments presented in the Agency's response to the petition for review. Yet the CR was prepared well in advance of that date. Respondent suspects Part C has been revised again and again by this investigator to cover his tracks and justify his actions and conduct.[3]

Further, in Part C, Investigator Melsopp claims that Respondent (1) denied FMCSA access to records, (2) delayed in the delivery of records for examination, (3) failed to make documents available that existed prior to June 1, 2003, (4) asked that his review be completed off their property, (5) failed to make individuals available for interviews, and (6) gave false statements about their efforts to obtain records from outside entities assisting them in their record keeping. And for these reasons, he needed 4-weeks of time and the help of three additional federal investigators—all to inspect 211 logs and 24 other files. Furthermore, there were 8 to 12 state police to inspect 25 trucks, yet when all was done the investigator walked away with only a handful of alleged violation, all of which pertain to another company who is not a proper party to this proceeding before the Chief Safety Officer. Preposterous, says Respondent, especially in light of the Fourth

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[2] At the compliance review closeout, Respondent, based on advice from counsel, specifically requested a copy of the investigator's notes (Part C). Investigator Melsopp refused to turn over his case notes and told carrier officials to make a freedom of information request. It is ironic that the Agency would now use this document at this pivotal stage of the proceeding without prior disclosure and after Respondent's filing of the Petition for Review. Respondent had no idea what it had to defend against by reading the CR served on it at closeout. Clearly, this document is highly prejudicial, and accordingly the Agency had a duty to disclose the document early in the proceeding and more appropriately at the time of the CR closeout.

[3] The Agency Rules of Practice for contested rating cases provide only for review by the Chief Safety Officer rather than assignment to an ALJ for hearing on the merits. Consequently, there is no ability to cross examine this investigator under oath and under the eye of a neutral trier of fact in order to determine his credibility in these proceedings. Such arbitrary shielding works as an artificial barrier to fundamental due process.

Amendment protection against unreasonable search and seizures from over zealous enforcement.[4]

Respondent dismisses each of these allegations by stating first that it was fully cooperative throughout the investigation. Second, if the investigator believed the carrier was holding back records or denying investigators to access of records, the Agency has subpoena power to compel production and could have easily exercised that power at any time during the proceeding (See 49 U.S.C. § 502). Third, Respondent was incapable of producing records before June 1, 2003 particularly since it started its operation after June 1. If the Agency wanted records from Williamson Produce Co. or from any other company subject to its jurisdiction, it must obtain those records from that company consistent with the Agency's statutory scheme, not by some trumped up method of overkill enforcement.[5] Fourth, the investigator was not requested to perform his review at any other location. Matter of fact, he suggested an alternate location. In the end, the CR was completed entirely on the property of Respondent, and he continued to squeeze Respondent to produce logs and supporting documents on Williamson Produce, an independent company, based on alleged facts and a preconceived notion that they were tied together despite corporate and other legal documents proving clearly they were not[6].

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[4] Respondent claims $550,000 in revenue over three months, yet it had to all but cease business to meet investigator demand for two weeks. Broken down, this overly burdensome review cost the company approximately $6,000.00 a day in lost revenue, which when factored into a two-week period, adds up to almost $86,000. Yes, admittedly, the government has a right to review the records of Williamson Transport, but not to the point of costing the company 15% of its total revenue to date.

[5] Creative enforcement, although permissible, must still be reasonable and within the bounds of Agency policy and procedure. (*See York v. Burger*, 482 U.S. 702-703 (1987).

[6] The records before the Chief Safety Officer specifically *In the Matter of Williamson Produce Co, Inc d/b/a Williamson Trucking Co.*, Docket No. FMCSA-2003-14415, clearly show that Williamson is still in business but not as a motor carrier and that this company is not attempting to evade its responsibilities with respect to the Agency's outstanding claims—it's simply defending itself within the bounds of the law.

These enforcement tactics are beyond the scope of law and regulations applicable to motor carrier safety, contrary to the public interest, and beyond reasonableness. On repeated occasions Respondent asked Investigator Melsopp to make his requests for records and other information to either the President of Williamson Transport or his safety consultant. Nevertheless, he chose to ignore this plain request. He made attempts to interview drivers without carrier officials being present. He attempted to snatch records off the desk of an employee while she was working on the documents. In short, this investigator exceeded the limits of the consensual search in his zeal to "nail" this carrier.

What is so troubling is that the investigator's absurd accusations contained in Part C of his report were never served on Respondent. Rather, they were discovered in the exhibits of Agency counsel's brief, and only then did the issues become clear. Why a hidden agenda?[7] This document is a highly prejudicial document and if allowed to stand without cross-examination, it will only further taint these proceedings. Without argument at this point, Respondent plainly asks the Chief Safety Officer: What happened to fundamental fairness and reasonable and responsive government? Whatever happened to substantive and procedural due process in contested motor carrier safety rating and enforcement cases? Why did the Agency fail to disclose Part C of the CR when it relies solely on this "revised" document to make its case to the Chief Safety Officer? And why did Agency employees then bury the document in the CR exhibits the Agency filed with

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[7]Respondent believes that Investigator Melsopp prepared this "smoking gun" document to cover his steps and to justify his actions. Further, we believe this document was revised more than once specifically to counter Respondent's arguments in its Petition for Review and to bolster legal arguments sufficient to persuade the Chief Safety Officer to rule in the North Carolina Division Office's favor. These tactics defy common sense and fair play especially when Respondent's counsel, through the safety consultant, specifically asked for this document during the CR closeout session. The investigator flatly denied the request and cavalierly told Respondent to make a Freedom of Information request to headquarters.

the Chief Safety Officer in hopes it would go unnoticed by Respondent? Why can investigators deviate from written enforcement procedures or make-up new guidelines at their own discretion and not be accountable for their false representations? Respondent does not understand why Agency's rules of practice deny a carrier an ALJ administrative hearing for unsatisfactory rating, a far more serious proceeding, yet grant carriers ALJ hearings for contesting a mere $500 civil forfeiture fine? More importantly, why should the Chief Safety Officer serve as the adjudicator over this Petition for Review when he is also the supervisor over all enforcement staff and sets the Agency's enforcement policies and procedures? For a new operating administration within the USDOT, there appears to be no separation between judicial and executive functions. So again, Respondent asks—how can it get a fair impartial ruling from this kind of tortuous regulatory/policy scheme?

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Argument and Defenses

II. ISSUES BEFORE THE CHIEF SAFETY OFFICER

In this case, the issue before the Chief Safety Officer is whether investigators acted reasonably in charging Respondent with alleged safety violations committed by Williamson Produce Co d/b/a/ Williamson Trucking Company and to rate Respondent unsatisfactory for those alleged violations under the legal theory of substantial continuity? Respondent says not for the below stated reasons:

1. Agency investigators improperly predetermined that two separate North Carolina companies were one and the same under a theory of "substantial continuity". As a result, they initiated an investigation of one company, a motor carrier, but sought records and documents from another company who

was a non-motor carrier to prove their theory. In their attempts to tie the two companies, investigators deviated from their enforcement policies and procedures, created new or made-up requirements to obtain records and disclosures, made overly burdensome and unreasonable demands, and acted in a manner unbecoming federal officials. Hence, their actions and conduct were objectively unreasonable, oppressive, abusive, and contrary to Fourth Amendment rights to be free from unreasonable search and seizures.

2. Agency investigators operating outside of the policy and procedures treated Respondent in a manner inconsistent with Fifth Amendment protected rights also—equal protection under the laws and substantive due process. The Agency's treatment of Respondent (a minority-owned and -controlled motor carrier) is discriminatory and inconsistent with the treatment afforded other new entrant carriers and/or longstanding carriers. As a result, Respondent has been denied a complete understanding of the underlying basis for excessive enforcement, overly burdensome production demands, denial of full basis for downgrading Respondent's safety rating, the right to an impartial hearing on the merits, and more.
3. Agency reliance on "substantial continuity" in this case is misplaced because Williamson Transport is independent of Williamson Produce and counsel's post hoc rationalizations are no substitute for proper action by the Agency itself. Further, North Carolina law does not adhere to the theory of "substantial continuity."
4. Agency attempts to hold Respondent to a standard of strict liability by its application of "substantial continuity," which is contrary to applicable case

law and Agency precedent. Courts have ruled that the standard governing motor carrier safety compliance is not one of strict liability; rather it is a standard of general negligence.

5. Agency enforcement staff is estopped from raising questions of Respondent's legitimacy as a bona fide North Carolina Corporation. Respondent has obtained the right to engage in interstate commerce as a motor carrier by evidence of the Agency's approval of Respondent's application for operating authority and DOT number. Agency field investigators are thereby estopped from inventing new rules or policies or applying untested legal theories so as to undermine prior Agency approvals which Respondent has relied upon to its detriment.
6. For the Chief Safety Office to condone the actions and conduct of Agency investigators based on the record and arguments before him is to put in issue whether there is adequate separation of power or whether institutional or prosecutorial bias is present in this matter. Accordingly, Respondent respectfully requests the Chief Safety officer to address this matter fully in his written decision in order to perfect the record on appeal to the U.S. Court of Appeals in the event that course of action becomes necessary.
7. The acute and critical violations identified in the Compliance Review and relied upon by the Agency to justify a proposed unsatisfactory safety rating are in error because they are violations of another company. Consequently, they are not attributable to Respondent, and therefore is not competent evidence to prove the Agency's underlying charges.

A. AGENCY ACTIONS VIOLATED FOURTH AMENDMENT RIGHTS

Under 49 U.S.C. §§ 504(c) and 31133(a), FMCSA investigators are granted statutory authority to inspect records and equipment of motor carriers. However, there is no statutory authority that permits Federal investigators to make arrests or seize property or evidence. Rather, investigators are limited to consensual searches only of a motor carrier's operation.

Despite this broad statutory authority to enter and inspect, the consensual inspection must be balanced against constitutionally protected rights. It is well settled that the Fourth Amendment to the U.S. Constitution restricts unreasonable searches and seizures of individuals and businesses *Donovan v. Dewey*, 452 U.S. 594, 101 S.Ct. 2534, 69 L.Ed.2d 262 (1981), including companies engaged in a highly regulated business such as interstate commerce. *Marshall v. Barlow. Inc*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978); *U. S. v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972). Warrantless inspection however of such highly regulated businesses must still be **reasonable** to comport to the Fourth Amendment's safeguards. Warrantless inspections are deemed reasonable so long as (1) there is a substantial government interest that is in keeping with the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspection is necessary to further that regulatory scheme; and (3) the statute's inspection program in terms of certainty and regularity of its application, provides a constitutionally adequate substitute for a warrant, i.e., for specific purposes and by limiting the discretion of the investigative officers in time, place, and scope of inspection. *York v. Burger,* 482 U.S. 691, 702-703, 107 S.Ct. 2636, 96 L.Ed.2d 601(1987*); Donovan v. Dewey*, 452 U.S. 594, 598- 599, 101 S.Ct. 2534, 69 L.Ed.2d 262 (1981), *U. S. v. Biswell*, 406 U.S. 311, 315, 92 S.Ct. 1593, 32 L.Ed.2d 87(1972).

In the matter before the Chief Safety Officer, there was nothing reasonable about the actions of the North Carolina Division investigators. In the exercise of powers of investigation, an administrative agency must not act arbitrarily, oppressively, or unreasonably, which is exactly what these investigators did. *Oklahoma Press Pub. Co. V. Walling*, 327 U.S. 186, 213, 66 S.Ct. 494, 508, 90 L.Ed. 614, 166 (1946) (stating in dicta, "[o]fficious examination can be expensive, so much so that it eats up men's substance. It can be time consuming, clogging the processes of business. It can become persecution when carried beyond reason.").

1. Agency Investigators Acted Arbitrarily, Unfairly, and Unreasonably

Over a four-week period, Federal and State investigators spent countless hours on this 25-truck operation, based on an investigator's predetermined "hunch". Specifically, the review began on September 16 and ended on October 3, 2003 (14 working days), with as many as four federal investigators and as many as 8 to 12 state investigators.

Respondent's safety consultant monitored investigator's time and participated throughout the review. According to his calculations, Federal investigators spent over 130 investigator hours plus and an additional 75 hours of travel to complete their two-week review. Additionally, North Carolina State Police Investigators spent close to 200 hundred hours over several days to complete vehicle inspections on a twenty-five truck operation (Brylski Second Affidavit ¶ 12). Although Investigator Melsopp asserts in his affidavit that the NC State Police conducted a separate and independent investigation, Respondent believes to the contrary.

On information and belief, it was the federal office that requested the Patrol's participate in the investigation and to assist in completing inspection reports against Williamson Produce instead of Williamson Transport because of improper markings on

leased trucks. The N.C. Highway Patrol does not normally participate in these types of compliance review investigations unless specifically asked by the FMCSA (Brylski Second Affidavit ¶ 7). Investigator Melsopp admitted as much in Part C to his compliance review by identifying State Police individuals who assisted him in the investigation. Further, Mr. Melsopp claims the NC State Police investigation was entirely separate and independent because they were investigating intrastate violations. However, Williamson Transport operates entirely in interstate commerce. So why would 8 to 12 State Police officers spend approximately 200 hundred hours in a 25-truck operation over a two week period when it operates only in interstate commerce? I am sad to say Mr. Melsopp's credibility is definitely at issue in this case.

For a compliance review, this is absolute enforcement overkill, especially for a new entrant motor carrier of this size, and well outside Agency policies and procedures. The Agency cites no policy precedent for these enforcement tactics because none exists. As for scarce resources, the Agency is not walking the talk. Although the investigation was conducted with the back drop of a "compliance review" the real agenda, albeit a hidden agenda, was to link Williamson Produce to Williamson Transport using whatever tactics necessary, even if it meant trampling Respondent's rights. Williamson Produce Company is not a proper party to this action. If Agency investigators believed otherwise, they should have provided it with notices of claim and an opportunity to defend itself. However, investigators elected to squeeze Respondent for production of Williamson Produce's information and records under a "substantial continuity" theory crafted well before the compliance review.

As the U.S. Supreme Court stated so well, expert discretion is the lifeblood of the administrative process. However, if a government agency fails to make the

administrative action strict and demanding, the power of modern government "can become the monster which rules with no practical limits on its discretion." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167, 83 S.Ct. 239, 9 L.Ed.2d 207 (1962) *citing New York v. United States*, 342 U.S. 882, 884, 72 S.Ct. 152, 153, 96 L.Ed.2d 662 (dissenting opinion).

2. Overly Burdensome Compliance Review Time, Place, and Scope of Inspection

Respondent kept meticulous records of investigators' time, anticipating this would be an unusual experience. Respondent's numbers were recorded daily, not two months later for purposes of a litigation affidavit. Letters were written to the North Carolina Division Office raising concerns over this overkill enforcement level of effort with no response from the Agency.

It was obvious to Respondent that Mr. Melsopp was directing and controlling the outcome of both federal and state investigations. (Brylski Second Affidavit ¶ 7, Exhibit GG). Consequently, as many as 16 federal and state officers made unreasonable and burdensome record demands, unchecked by any neutral criteria regulating time, place, and scope of inspection. *Id. York* at 702-703; *Donovan* at 315. In Part C, Investigator Melsopp admits to making overly burdensome demands for records far in excess of the sample required in enforcement guidelines. In one particular instance, he even admits to asking for information he didn't even need or want—his reasoning being that he knew the carrier would be reluctant, and he wanted to "see what kind of records the carrier actually maintained" (*See* Part C, page 5). Where is the reasonableness in this request?

3. Investigator's Conduct Was Unbecoming A Federal Official

During the four-week investigation, Mr. Melsopp continually ignored requests of Respondent to direct all demands for documents and information to either the President or his safety consultant. Mr. Melsopp repeatedly attempted to circumvent that request by going directly to drivers and other employees seeking information and documents. Since the carrier is ultimately responsible under the FMCSRs, the carrier has the right to be present in any interviews of their employees regardless of the preference of the investigator. At one point, ignoring Respondent's request, he attempted to grab papers/documents off the desk of an employee while she was performing her daily tasks (Brylski Second Affidavit ¶ 6).

Both in Part C and in his declaration, Investigator Melsopp admits that the NC Office had predetermined Williamson Transport was a continuation of Williamson Produce well before completing the compliance review. Consequently, Respondent's rating was predetermined to be unsatisfactory regardless of the condition of its vehicles or its paper work. Investigator Melsopp's primary purpose was to gather enough circumstantial documentation to support his personal conviction. What carrier is safe if the government employs such inductive logic, a guilty-until-proven-innocent investigative process, a fate accompli conclusion based upon investigator whim or fancy? If the carrier is guilty before the knock on the door, why spend precious time and energy merely going through the exercise?

Respondent was given no advanced notice of the Agency's underlying basis for the unsatisfactory safety rating, it had no way to anticipate such bizarre outcome from reading the CR served upon it, and had no opportunity to address this issue in advance

unlike the treatment afforded *Allometrics*.[8] Further, Respondent is unaware of any law, policy, or procedure that condones this kind of clandestine enforcement tactic, which allows the Agency to offer "post hoc rationalizations" for agency actions, advanced for the first time to the Chief Safety Officer. *See Martin v. OSHA*, 499 U.S. 144, 156, 111 S.Ct. 1171, 1179, 113 L.Ed 2d 117 (1991) (citations omitted) (holding "agency 'litigation positions' are not entitled to deference when they are merely appellate counsel's 'post hoc rationalizations' for agency action, advanced for the first time in the reviewing court.").

On October 3, 2003, Investigator Melsopp displayed unprofessional conduct becoming a federal official by openly calling in question the integrity of Respondent's President and his agent in a public place (Riddick Affidavit). His outbursts were overheard and reported to the President that very day (Maynor Second Affidavit ¶ 8). Investigator Melsopp's actions and conduct were unprofessional, improper, and unjustified under the known circumstances, I am sorry to say.

B. FIFTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION

Any administrative agency, in determining how to effectuate public policy, is limited by principles of fundamental fairness. Thus, an agency may not act in such a way as to cause disparate or inconsistent treatment of similar situated parties, particularly by applying different or made up standards to fit preconceived notions. *Mathews V. Eldridge*, 424 U.S. 319,96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Such actions are to act arbitrarily.

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[8] "A party is entitled, of course, to know the issues on which [the] decision will turn and to be apprised of the factual material on which the agency relies for [its] decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation. *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc,*. 419 U.S. 281, 288 n.4, 95 S.Ct. 438, 443, n.4, 42 LEd2d 447 (1974).

1. Equal Protection

Here, the public interest is motor carrier safety effectiveness. The Congress has provided a broad statutory scheme, and the DOT has provided a regulatory framework to implement the statutory mandates. However, the FMCSA has failed to establish a regulatory scheme for enforcement that embodies non-discriminatory and neutral criteria or that puts reasonable bounds on investigator's enforcement discretion, especially with respect to time, place, and scope of inspection.

Without such regulatory or neutral enforcement criteria serving as a proper check and balance on investigators' discretion, Agency enforcement can turn ugly, such as in this one, which, in effect, denies Respondent equal treatment and due process. *Bowman Transportation,* at 288 n.4. Agency investigators held key information back, provided no advance notice of their intent, and consequently denied Respondent the basic understanding of the underlying reasons for the unsatisfactory rating. Thus, Respondent did not have fair notice of what it needed to defend against. If counsel had not looked carefully at the exhibits to the Agency's response to the petition for review, it would not have noticed inclusion of Part C, into the CR served on Respondent (Brylski Second Affidavit ¶ 1). In the original CR served on Respondent, the only clues as to the Agency's predetermination was the entry of inflated miles above miles provided by Respondent and the dates of some alleged violations which preceded Respondent's incorporation. Failure to disclose its rationale for the unsatisfactory rating at the time of closeout is inexcusable, particularly when Agency Counsel knew that Respondent's counsel also represented Williamson Produce Company (Scapellato Affidavit ¶ 1).

2. Due Process

Indisputably, there is a prescribed regulatory process that motor carriers must comply with to engage in interstate commerce. In both cases, each company was granted operating authority and separate DOT numbers to operate. Further, the Agency determined that Respondent was a new-entrant motor carrier. Even the initial letter informing Respondent of the impending CR was addressed to the president of Williamson Transport; therefore, it stands to reason that the CR should be limited to Williamson Transport—period. If investigators wanted records from another company (with different DOT and MC numbers), then it should have contacted that company independent of this investigation.

Further, Respondent asserts that the only relevant document before the Chief Safety Officer is the CR served on them at closeout, which is short Part C. Contrary to fundamental fairness, Respondent believes Investigator Melsopp revised Part C to coincide with the Agency's legal arguments, which makes this document very suspect and prejudicial if given consideration by the Chief Safety Officer. The only reason Part C was added at the eleventh hour was to obfuscate the Agency's failure to articulate a rational basis for its predetermined decision in the CR. Without inclusion of Part C, the Agency would have failed afforded Respondent or the Chief Safety Officer any basis for reviewing the decision to downgrade the carrier's safety rating.[9] It is well established that an agency's action must be upheld, if at all, on the protocol articulated by the Agency itself and not on Agency Counsel's post hoc rationalizations for Agency actions. *Motor Vehicle Mfrs. Assn V. Sate Farm Mut.*, 463 U.S. 29, 50, 103 S.Ct. 2856, 2870, 77 L.Ed.2d 443 (1983). This case is a classic example of "post hoc" justification and clearly shows

[9] *In the Matter of Paragon Express, Inc.*, Docket No. FMCSA-2001-8721-2, Order dated October 10, 2003 at p. 3.

how equitable treatment would be impossible if presuppositions made by Agency counsel become the determinants of investigators' conclusions. This problem compounds even further if Agency hunches extend to state agencies (e.g. North Carolina State Highway Patrol) who simply mold their conclusions to complement the Agency's findings.

C. AGENCY'S RELIANCE ON SUBSTANTIAL CONTINUITY IS MISPLACED AND ARBITRARY

Before examining the applicability of "substantial continuity" in the context of this case, a more fundamental threshold issue must be decided first, i.e. whether the FMCSRs and enabling statutes act as an absolute bar against successor liability?

1. FMCSRs Preempt The Substantial Continuity Claim

Respondent argues that the FMCSRs preempt the stricter "substantial continuity" test and for that matter even the "mere continuation" application because the Agency's regulations, policies, procedures, and enforcement guidelines do not prescribe a uniform, neutral regulatory scheme for continuity enforcement and adequate due process protection for resolution of these claims. Until such a regulatory scheme is developed through notice and comment rulemaking, the Agency should be barred from asserting these claims based solely on enforcement-initiated banter. Continuity enforcement tactics left to investigators' unbridled discretion fuel an arbitrary and capricious process—the death knell in government administrative practice.

Assuming arguendo that the Agency's regulations permit a "mere continuation" or "substantial continuity" claim, there would be no need for the government to seek the statutory fix proposed in the Agency's Highway Reauthorization Proposal (SAFETEA §

4301).[10] Consequently, Respondent argues that indeed the regulations are silent on successor liability and until such time as the Agency addresses this important issue in the proper administrative manner and forum, the Chief Safety office has no law to apply. Thus, there is no cause of action before him ripe for decision. Without waiving the above defense, Respondent will address fully the government's claims asserted under a theory of "substantial continuity" as set forth below.

2. Substantial Continuity Is Not The Applicable Law To Be Applied.

A review of relevant case law reveals that North Carolina appellate decisions follow the "traditional approach to the mere continuation" theory as opposed to the "substantial continuity" theory or "continuation of enterprise". *See G.P. Publications v. Quebecor Printing*, 125 N.C. App. 424, 434, (1997) *citing Bryant v. Adams*, 116 N.C. App.448 (1994), *disc. review denied*, 339 N.C. 736 (1995); *Coffin v. ISS Oxford Services, Inc.* 114 N.C. App.802 (1994); *Budd Tire Corp. v. Pierce Tire Co.*, 90 N.C. App.684 (1988). The traditional rule regarding mere continuation is that "a corporate successor is the continuation of its predecessor if only one corporation remains after the transfer of assets and there is identity of stockholders and directors between the two corporations." *G.P. Publications, at 434 citing Ninth Ave. Remedial Group v. Allis-Chalmers Services, Inc.*, 195 B.R. 716, 724 (N.D. Ind. 1996) *citing U.S. v. Carolina Transformer Co.*, 978 F. 2d 832, 838 (4th Cir. 1992) (other citations omitted). "This

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[10] Section 4301 proposes as follows: "Some motor carrier managers order, encourage, or tolerate widespread regulatory violations and, when caught, declare bankruptcy, rename the motor carrier and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties, obscure the identity of the motor carrier and thus its safety record, and perpetuate a casual indifference to public safety. Section 4013 would address these problems. It would amend 49 U.S.C. 31135 to authorize the Secretary to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal motor carrier safety standards. The Secretary could also deny an application to register as a for-hire motor carrier if any of the proposed officers of the carrier has engaged in a pattern of non-compliance...."

exception encompasses the situation where one corporation sells its assets to another with the same people owning both corporations." *Ninth Ave*, 195 B.R. at 724 *citing City Environmental Inc. v. U.S. Chemical Co.*, 814 F. Supp. 624, 635 (E.D. Mich. 1993). Therefore, the traditional approach emphasizes continuity of stockholders and directors between the selling and purchasing corporations. *U.S. v. Mexico Feed and Seed Co., Inc.*, 980 F. 2d 478, 487 (8th Cir. 1992); *Carolina Transformer Co.*, 978 F. 2d at 838.[11]

In the *G.P. Publications* case, the N.C. Appellate court concluded that the trial court erred in its instruction to the jury regarding the elements of the "mere continuation" exception when it charged the jury to apply a broader test of successorship called "substantial continuity" or "continuity of enterprise."[12] In the turbulence of the motor carrier industry, it is commonplace for companies to file for bankruptcy, merge, or be acquired, use the same pool of employees, and share other resources in the creation of new motor carriers—all of which fall under a standard outside of substantial continuity when analyzing why companies go out of business.[13] Clearly, in the case of Williamson Transport, this causal chain plays into several of the factors in establishing substantial continuity, but in the context of the motor carrier industry and the rapid-fire ways in which companies dissolve and rise again under semblance of the pre-existing company,

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[11] North Carolina law also considers two additional factors to the issue of continuity of ownership: (1) adequate consideration for the purchase; and (2) elements of a good faith purchaser for value. *Budd Tire*, 90 N.C. App. at 687 (citations omitted), both criteria having been fully met in the case of Williamson Transport.

[12] This approach considers a series of factors in determining whether one corporation is the successor of another: (1) retention of the same employees; (2) retention of the same supervisory personnel; (3) retention of the same production facilities in the same location; (4) production of the same product; (5) retention of the same name; (6) continuity of assets; (7) continuity of general business operation; and (8) whether the successor hold itself out as a continuation of the previous enterprise. *Id.* (citations omitted); *Carolina Transformer Co*, 978 F. 2d at 838 (citations omitted).

[13] This is the reason the Court in the GP Publications case refused to apply the substantial continuity test, holding that while this standard may apply in product liability, labor, and environmental cases, it did not apply here because other ruling courts "did not appreciate the rationale behind [substantial continuity]."

this standard cannot be applied except in cases where a company is trying to absolve itself of some financial or regulatory burden—hence, the preconceived notion against Williamson Produce. However, Williamson Produce is not evading financial responsibility, as it is presently contesting an NOC before the Chief Safety Officer. As the Chief Safety Officer has ruled on many occasions, the purpose of the fine is not to punish but to create an incentive for compliance. When Williamson Produce d/b/a Williamson Trucking Company went out of trucking business, the safety goal of the government was fully achieved.

It has been established that the "substantial continuity" test has evolved from the "mere continuation" test in contexts where public policy vindicated by recovery from the implicated assets is paramount to that supported by the traditional rules delimiting successor liability. The test has been applied in cases such as labor relations,[14] product liability,[15] and environmental regulation[16] where a strict liability statute applied. *Mexico Feed*, 980 F.2d 487. However, within the context of the motor carrier safety program, Respondent believes that neither federal nor state courts have yet to address the applicability of "substantial continuity" or "continuity of enterprise" as it applies to successor corporate entities engaged in interstate commerce as motor carriers.

3. Arbitrary Nature of Application Without Fair Notice

The FMCSA registers over 60,000 new entrant motor carriers each year. Many of these new companies emerge as an outgrowth of bankrupted, merged, or newly acquired companies. The Agency published in the *Federal Register* an interim final rule for the "New Entrant Safety Assurance Process" on May 13, 2002. In that rule, for example, the

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[14] *Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 94 S.Ct. 414, 38 L.Ed2d 388 (1973).
[15] *Mazingo v. Correct Mfg. Corp.*, 752 F. 2d 168 (5th Cir. 1985).
[16] *U.S. v. Carolina Transformer Co.*, 978 F. 2d 832 (4th Cir. 1992).

Agency is silent about the possibility that any new entrant motor carrier could be subject to Agency rating and enforcement challenge depending upon how it came into existence. Also, the Agency has failed to provide sufficient notice and opportunity to comment on the Agency's intent to invoke a "substantial continuity" test similar to the strict liability legal test applied in environmental cases. Within the context of the motor carrier safety program, the Agency provided Respondent with no fair notice that factors outside the FMCSRs would be considered to determine the legitimacy of their corporate standing post hoc of Agency approval. Currently, the statutes and regulations are silent on this point, as evidenced by the agency's proposed statutory addition § 4301 to SAFETEA.

To allow investigators to exercise unchecked discretion sufficient to create a new regulatory or enforcement scheme constitutes an arbitrary abuse of authority and discretion. Further, it has a chilling, negative effect on potential purchasers who choose to acquire or merge a business by creating fear of liabilities they never intended to assume.

In *United Sates v. Chrysler Corp.*, 158 F. 3d 1350, 1355 (D.C. Cir. 1998), the Appellate Court explained that one must examine the language of the statute or regulation to "determine whether 'a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expect[ed] parties to conform'" (*quoting General Electric Co., v. EPA*, 53 F. 3d 1324, 1328, 1333 (D.C. Cir. 1995). In the *General Electric* case, the Court further held that because "[d]ue process requires that parties receive fair notice before being deprived of property," an agency could not penalize a regulated party for asserted regulatory violations when the party lacked "fair warning of [the agency's] interpretation of the regulations." *Id.* In addition, the Court went on to explain in that case that "[i]n the absence of notice—for example,

where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property...." *Id.* at 1328; *see also Satellite Broad Co. v. FCC*, 824 F. 2d 1, 3 (D.C. Cir. 1987)) (Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule.").

Although the Agency argues that the public interest demands companies to be held to a standard furthering the objectives of motor carrier safety, this cannot mean the Agency has the right to trample on constitutionally protected rights by creating new law or precedent. For the Chief Safety to allow the unsatisfactory safety rating to stand based on a pre-determined standard of substantial continuity without fair notice of such a regulation would have a chilling, adverse affect on interstate commerce.[17] Respondent believes that no public policy will be served if the Chief Safety Officer applies a "substantial continuity" test in this case, especially since it is contrary to North Carolina law applicable to successor corporations. Significantly, it is uncontroverted, in the matter before the Chief Safety Officer, that Respondent does not share any common stockholders or directors with Williamson Produce Co. Although Respondent's President held a safety management position and some drivers and administrative staff worked previously for Williamson Produce Co., there is no evidence that any of these individuals played an ownership role in running that company in any capacity. Further, there is no

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[17] In the case of *LJ Best Furniture Distribution, Inc. v. Capitol Delivery Service, Inc.* 111 N.C. App. 405 (1993), the Appellate Court dealt with an issue similar to the one before the Chief Safety Officer. In *Best*, one could read that case to mean, the Appellate Court agreed that a "mere continuation" claim might be appropriate because in addition to a lack of consideration, there was evidence that the purchasing corporation leases the same trucks, as the selling corporation, had the same employees, and serviced the some of the same customers. *Id.* at 432. Nevertheless, the NC Appellate Court put this issue to rest by expressly stating "we believe that the courts in those cases applied this broader ["substantial continuity"] test without appreciating the rationale behind it." *G.P. Publications*, 125 NC App. at 438 *citing Louisiana Pacific Corp. v. Asarco, Inc.* 909 F.2d 1260, 1265 (9th Cir. 1990) (court refused to apply substantial continuity test because purchaser had no knowledge of seller's potential CERCLA liability.)

evidence that Respondent agreed to assume any liability for the transaction alleged, or some kind of de facto merger, or the transaction was fraudulently entered into, or lacking in good faith in order to escape liability[18] *See also Mexico Feed* at 487. Rather, the facts show adequate consideration has passed between the companies, and each company performs a commercial useful function independent of one another, and therefore the new entrant motor carrier Williamson Transport is not a "mere continuation" of the defunct company Williamson Produce Co d/b/a Williamson Trucking Co. Though there is a relationship between the two companies, the nature of it is a professional, independent, and symbiotic operation with separate, logical roles (i.e. a truck-leasing non-motor carrier and a produce-hauling motor carrier).[19]

4. Reliance on Allometrics Case Is Misplaced

The Agency relies heavily on the case holding *In the Matter of Allometrics, Inc.,* Docket No. FHWA-1997-2488 (March 10, 2003) for the alleged proposition that "a company which is a continuation of a previous company is considered one and the same for purposes of the of the FMCSA regulations." (Agency's Response to Petition for Review p.1). Respondent believes that the facts in *Allometrics* are clearly distinguishable from the facts here. *Allometrics* is a case that involved a contested civil penalty as opposed to a contested safety rating. Consequently, the issue of evading a fine with respect to Respondent is not in play. Second, *Allometric's* President (Texas corporation) was afforded two opportunities to submit evidence why it should not be held responsible for the actions of its Louisiana predecessor; Williamson Transport was given no chance

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[18] Williamson Produce Co is aggressively defending itself in a civil forfeiture action pending before the Chief Safety Officer. It is not attempting to evade anything. *See In the Matter Of Williamson Produce Co. d/b/a Williamson Trucking Co.*, Docket No. FMCSA-2003-14415.

[19] If these two companies were one in the same, it is illogical for the Agency to grant new authority and DOT numbers to Respondent and for it also to maintain two separate docket numbers for outstanding case matters for each company.

to explain its relationship with Williamson Produce prior to being served its proposed rating. The Agency never disclosed its position of substantial continuity between Williamson Produce and Williamson Transport in the CR, which prevents Respondent from defending itself until the underlying charges were disclosed at the eleventh hour.

The government contends as a part of substantial continuity that because the Williamson name appears in both companies, that they must be linked. However, Respondent elected to use the "Williamson" name because of name recognition and the good will their company fosters in the business community. The companies share location and have provided jobs for some drivers and administrative staff because such practices saves money and resources and are an extension of good business strategy (Maynor Second Affidavit ¶¶ 5, 6, and 7). This is hardly sufficient justification in the absence of federal law to hold a company as a continuation of another under state law, as the Agency determined in *Allometrics* (*G. P. Publications*, at 487). As argued previously, North Carolina law does not apply the substantial continuity test, and even if it did, it would be inapplicable to the motor carrier industry because the Agency's regulations are silent on this point.

Because the Agency believes Respondent is hiding behind "cosmetic corporate change," because they did not change the markings on the side of their trucks, and for the Chief Safety Officer to permit or condone such obvious evasion tactics would frustrate future enforcement of the FMCSRs is preposterous. What frustrates effective enforcement and dispirits the motor carrier industry is when investigators are required or permitted to exercise unbridled discretion, to invent new rules or requirements, to enforce rules in a discriminatory manner, or when they don't get their way to then throw temper

tantrums in public places—now that's what undermines the public confidence and interest.

5. Agency's Attempts to Invoke a Strict Liability Standard

It is established that whether a corporation is a "substantial continuation" of another is a legal, not a factual, question. *Mexico Feed*, 980 F. 2d at 489 n. 13. By applying a "substantial continuity" test, under the facts of this case, the Agency is attempting to essentially invoke a strict liability standard on Respondent similar to the statutory standard imposed on corporations under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").[20] Although national safety objectives are appropriately high and of considerable import to the public interest, the Agency is nevertheless barred from imposing a strict liability standard on a motor carrier without statutory authority. [21]

No regulated carrier can possibly be held accountable for reading and following every unpublished Agency decision in every case in controversy. *See Appalachian Power v. EPA,* 208 F. 3d 1015, 1020 (D.C. Cir 2000). Surely that is why the Supreme Court has noted (in dicta) that APA rulemaking is required where an interpretation "adopt[s] a new position inconsistent with ... existing regulations." *Shalala v. Guernesy Memorial Hospital*, 514 U.S. 87, 100, 115 S.Ct. 1232, 131 L.Ed2d 106 (1995). Here, Respondent might have satisfied the Agency's expectation with the exercise of "extraordinary intuition" or with the "aid of a psychic" but these possibilities are more than the law requires. *U.S. v. Chrysler Corp.,* 158 F. 3d 1350, 1357 (D.C. Cir. 1998).

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[20] Comprehensive Environmental response, Compensation, and Liability Act ("CERCLA") is a remedial strict liability statute and its focus is on responsibility, not capability. *See* 42 U.S.C. §§ 9601-9675; *Mexico Feed* at 484.

[21] In *Truckers United for Safety v. Federal Highway Administration*, 139 F. 3d 934, 938 n.1 (D.C. Cir 1998), the Court indicated the standard of liability is one of, at least, negligence rather than strict liability; *In the Matter of Cargo Transport, Inc,.* Docket No. FMCSA-99-5739 Order, October 13, 2003 p.1.

6. The Agency Is Estopped From Downgrading Respondent's Safety Rating.

"When the Government is unable to enforce the law because the conduct of its agents has given rise to estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined." *Heckler v. Community Health Services*, 467 U.S. 51, 60, 104 S.Ct. 2218, 2224, 81 L.Ed2d 42 (1984). Although the burden is heavy, Respondent contends on the facts of these proceedings estoppel is applicable. Respondent has relied on the Agency's approval of its operating authority and assignment of a distinct DOT number. In reliance thereof, it has committed extensive resources in furtherance of its business enterprise. Respondent has used sound business practices to minimize cash flow and keep operating expenses low; hence, shared space arrangements, etc. Respondent has everything to lose. Yet, investigators appear to treat this case as some kind of monopoly game where play money is at stake: hidden agendas, concealed reports, and arbitrary deviation from their bright line enforcement procedures. The Chief Safety officer should immediately recognize the deviation since he is responsible and accountable for the policy and the actions of his field staff. Respondent finds no case facts more suitable than this one to invoke the equitable doctrine of estoppel to prevent injustice from occurring.

D. SECTION 385.17 REMEDY IS NOT AVAILABLE TO RESPONDENT

The Agency cites alleged violations that occurred before Williamson Transport was a motor carrier. For example, the Agency cites Mary Solberg for a violation of §382.301(a), when Williamson Transport never employed her. Respondent asks sincerely how this motor carrier can take corrective action in response to this violation? The majority of other violations occurred before June 1, 2003, the date that Williamson Transport became active as a motor carrier. Thus Division Administrator Chris Hartley

letter dated November 2002 (sic), advises Respondent to list corrective action taken with regard to violations contained in the CR in order to be considered for a § 385.17 review. Respondent is troubled how this can be accomplished in a meaningful fashion (Brylski Second Affidavit ¶ 9). I guess Respondent could promise that in the event they hire Mary Solberg as a CMV driver they will ensure her compliance with the FMCSRs. The ridiculous action posed by Mr. Hartley's letter is further evidence of the Agency's arbitrary and capricious ways.

E. SEPARATION OF POWER AND PROSECUTORIAL BIAS

The danger of unfairness is particularly great in an Agency in which there is a high degree of concentration of both prosecuting and judicial functions, especially where the functions are combined in the same person. Such is the case in the FMCSA. The Chief Safety Officer (also the Assistant Administrator) on the one hand supervises all headquarters and field enforcement staff, activities and functions. On the other hand, he is the final adjudicator for the agency on contested enforcement cases. Respondent contends that this dual role creates a risk of actual bias or at the very least a perception of partiality in favor of the Agency.[22] The possibility of bias is extremely high, particularly since the only prohibition contained in policy is *ex parte* communication. Unlike enforcement cases, where the Rules of Practice 49 C.F.R. Part 386 permit the Chief Safety Officer to make an assignment to a non-biased Administrative Law Judge, only the Chief Safety Officer may review safety rating case petitions.[23] Ironically, the due process protection afforded a motor carrier for defense of a civil fine is far greater than

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[22] *See Walker v. City of Berkley*, 951 F. 2d 182 (9th Cir. 1981)(discussing constitutional due process requirements that different persons perform agency investigative and decision making functions); see also APA, 5 U.S.C. § 554(d) (prohibiting an "employee or agent" engaged in investigation or prosecution from participating or advising on the decision in an administrative case).

[23] *Darrell Andrews Trucking, Inc. v. Federal Motor Carrier Safety Administration*, 296 F. 3d 1120, 1134 (D.C. Cir. 2002)(confirming there is no right to an administrative hearing under 49 C.F.R. Part 385).

for defense of an unsatisfactory safety rating—which has much greater consequences on a motor carrier's ability to remain in business (*See* 49 C.F.R. § 385.13). Therefore, allowing the same person to serve as both adjudicator and as advocate for his enforcement staff is inherently suspect. Here, the Chief Safety Officer not only sets Agency enforcement policy but he is also responsible for completing performance ratings on Agency enforcement personnel. Yet, he is the very same person who adjudicates their enforcement and safety rating cases? Under that management scheme, the risk of unfairness is intolerably high. Therefore, Respondent respectfully requests the Chief Safety Officer to fully address this separation of powers and prosecutorial bias issues in his decision on the merits in order to perfect the record on appeal to the federal court of appeals, if that course becomes necessary.

F. THE AGENCY'S CHARGES TO SUPPORT AN UNSATISFACTORY RATING ARE NOT APPLICABLE TO RESPONDENT.

A motor carrier may request administrative review if it believes the FMCSA has committed an error in assigning its proposed safety rating pursuant to 49 C.F.R.§ 385.15. However, the motor carrier's request must explain the error(s) it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute and any information or documents that support its argument. *Id.*

In summary, Respondent asserts that the Agency's case lacks substance and enforceability because it has shown the FMCSRs do preempt a claim of substantial continuity, that substantial continuity is not the applicable legal standard to judge successor liability under North Carolina law. The Agency, therefore, is barred from invoking substantial continuity as a strict liability standard in the absence of fair notice of

a new standard; also, the Agency failed to disclose the grounds on which it is being invoked, denying Respondent an opportunity to defend against such claims. Further, because of arbitrary action and improper conduct of investigators and made-up enforcement standards, the Agency has undermined its ability to equitably charge and enforce any violation of the FMCSRs; thus, the Agency is effectively estopped from raising a substantial continuity claim at this point in the proceedings.

G. RESPONDENT'S REBUTTAL TO INDIVIDUAL CHARGES

Respondent challenges each and every acute and critical violation alleged in the CR and offers proof to rebut as follows:

Agency Charge No. 1 and 2 – Two violations of § 382.301(a) using a driver before receipt of negative pre-employment drug test: George Pope driving on September 22, 2003 and Mary Solberg driving on October 9, 2003.

Respondent's Rebuttal – Pursuant to the requirements of § 390.5, Driver George Pope was operating a farm vehicle. It was registered as a farm vehicle for purposes of transporting agricultural products and supplies/equipment not used in the operation of a for-hire motor carrier. It did not carry hazardous materials requiring placarding either. The vehicle registration card proves the vehicle is a farm vehicle; Driver Vehicle Examination Report shows the vehicle was empty at the time of inspection; a NC Tax Identification document indicates the owner, location, use, and value of the farm parcel that the vehicle serves; and an aerial picture of the farm indicates it is within 150 air miles of the vehicles use (Brylski Second Affidavit, Exhibit II. With respect to Mary Solberg, this charge fails because the Agency's substantial continuity claim fails. Driver Solberg never worked for Williamson Transport end-of-matter.

Charge No. 3 — One violation of § 382.305 (b)(1) failing to conduct random alcohol testing at an annual rate. Henry Jordan driving on December 11, 2002.

Respondent's Rebuttal -- With respect to Henry Jordan, this charge fails because the Agency's substantial continuity claim fails. Williamson Transport did not employ him at the time of the violation.

Charge No. 4 –Two violations of § 395.8(k)(1) failing to preserve drive's records of duty status for 6 months. Raymond Scott driving on March 27, 2003 and Jimmie Jackson driving on April 10, 2003.

Respondent's Rebuttal -- With respect to Raymond Scott and Jimmie Jackson, these charges fail because the Agency's substantial continuity claim fails. Williamson Transport did not employ either Driver Jackson or Driver Scott at the time of the alleged violations. Further, the company began operation as a motor carrier in interstate commerce on June 6, 2003. They would not have logs before that date.

Accident Factor Adjustment—the Agency, believing that the two companies are one and the same, inflated the mileage based on a combined mileage and accident rate of both companies (Maynor Second Affidavit ¶ 7). Consequently, the accident factor rate was over the threshold, and the carrier received an unsatisfactory in that factor.

Respondent's Rebuttal – accurate mileage and accident information was provided to the Agency. Since the successor claims are not to be judged by the substantial continuity test, the Agency was arbitrary for using the inflated mileage figures.

Finally, Respondent would like to set the record straight on a significant point. The Agency claims that on July 26, 2003, Mr. William R. Williamson, President of Williamson Produce, was given a speeding citation while driving a CMV for Williamson Transport (Agency's Response p. 10). Like so many other claims, the Agency is wrong. The evidence shows that Mr. Williamson was given a speeding citation while operating his private automobile (Maynor Second Affidavit ¶ 13).

III. ASSIGNMENT TO ADMINISTRATIVE LAW JUDGE

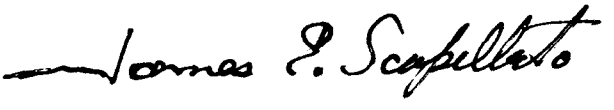
Although the holding in the *Darrell Andrews* case concludes there is no right to an administrative hearing in contested rating cases, Respondent asserts that because of the factual allegations contained in Part C of Investigator's Melsopp's CR and his declaration, and because of no legal precedent on which to base a substantial continuity ruling with respect to a motor carrier, that the Chief Safety Officer should make an assignment to an administrative law judge for resolution of these factual and legal disputes (*See* 49 C.F.R. § 386.54 (a)).

IV. STAY PENDING APPEAL

In the unfortunate event that the Chief Safety Officer upholds the Agency's proposed unsatisfactory safety rating, Respondent respectfully requests a stay of that safety rating pending appeal and resolution of this matter to the U.S. Court of Appeals. As aforementioned §385.17 "corrective action taken" is really not an option that would be of practical benefit. In light of only 5 substantive violations after four weeks of investigation by 16 investigators, Respondent hardly poses any more serious threat to public safety than any other A, B, or C designated SafeStat carriers operating in interstate commerce.

WHEREFORE, in consideration of the foregoing and the attached Affidavits, including supporting documents attached thereto, Respondent respectfully requests that the Chief Safety Officer (1) find that the actions of federal investigators were arbitrary, capricious, an abuse of discretion or otherwise not in accordance with laws, (2) conclude that the critical and acute violations giving rise to the proposed unsatisfactory safety rating are not applicable to Respondent as a matter of fact and law since the "substantial continuity" test has no applicability in this matter, (3) if necessary, assign an independent administrative law judge to settle the matters, (4) discuss why the Chief Safety Officer is free from institutional or prosecutorial bias and why there is adequate separation of powers to ensure fairness in the adjudication of this matter, (5) if necessary, grant a stay pending appeal, and (6) award attorney fees and expenses in defending this action, which are authorized by 5 U.S.C. §504(a)(1) and 49 C.F.R. Part 6.

Respectfully submitted,



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AFFIDAVIT OF MAYNOR

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:	
WILLIAMSON TRANSPORT CO., INC.	**Docket No. FMCSA-2003-16485**
Respondent	

SECOND AFFIDAVIT OF LARRY MAYNOR

STATE OF NORTH CAROLINA)
: ss.
County of Wilson)

I, LARRY MAYNOR, having been first duly sworn upon oath, deposes, and says voluntarily the following:

1. I am very disturbed by the course of these events. I believe I'm being treated differently than other minority new-entrant carriers under some vague legal theory. The demands placed on my company are outrageous and have severe consequences on my ability to do business and stay in business. I firmly believe it is the North Carolina Division Office's intent to force me to close my doors permanently (Exhibit AA).
2. I started my business independent of Williamson Produce once they decided to discontinue their business as a motor carrier.

3. I filed for articles of incorporation, an MC-150 application for a DOT Number, and an EIN number from the Internal Revenue Service on May 19, 2003. I followed these procedures precisely to ensure that my company would be legitimate and that it possessed separate identification as a motor carrier. The Agency's headquarters' staff must have agreed since it approved the application and assigned me a DOT number on May 21, 2003.
4. I was notified that as a new entrant I would be subject to a "safety audit" within an 18-month period (Exhibit BB). I welcome such an opportunity since I was eager to establish myself as a new-entrant carrier in interstate commerce. I began operation on or about June 6 and promptly entered into a lease arrangement with Williamson Produce Company for the use of their CMV equipment.
5. My relationship with Williamson Produce Company was and is limited to that outlined in the lease agreement. Further, the decision to share office space is one of common sense. Having my truck leasing company on the premises keeps operating costs as low as possible. It allows for inexpensive communication and logistical ease. Sharing office space and keeping the name Williamson makes practical sense, too, since it is a well-known and respected name in the business community and aids me in acquiring new business.
6. I have heard that having the same drivers has caused some to think my company is indeed an extension of Williamson Produce. The truth is that finding good drivers is difficult in this business, and frankly, I was fortunate to acquire some of the same drivers when Williamson Produce went out of the motor carrier business. Although I admit I was remiss in not changing the markings on the

trucks to reflect the new company, Williamson Transport, it in no way says we were doing business as Williamson Trucking. As a new motor carrier I am constantly faced with demanding issues, such as why I could not immediately change truck markings. Reasons range from decals being custom-made and taking a long time to prepare, to the person responsible for changing the markings was not always available at the time the vehicle was available. Sometimes drivers' work schedules and availability interfered, and often because the CMVs were on the road for extended periods of time, I could not get them into the shop to have the markings changed. The Agency takes for granted that this is a small company, and sometimes the manpower is just not there to complete all tasks as quickly as the government expects. I tried to concentrate on the most important aspects of the regulation.

7. I don't understand why someone didn't call me or question me as to why Williamson Trucking was still listed on my trucks. I could have easily explained that in starting my new company, we had other pressing start-up measures. In truth, it was a simple oversight, one for which I take full responsibility, but this doesn't mean I am Williamson Produce, as the government is suggesting.
8. I read the compliance review, and I take exception to the use of mileage numbers from Williamson Produce and Williamson Transport. I was asked to provide mileage numbers, and the Agency ignored them and instead obviously, used mileage numbers belonging to a different company who is not a motor carrier and who is presently no longer in business (Exhibit CC).

9. I am upset by the unprofessional conduct of the federal investigators. I take serious issue over Part C of the Compliance Review being withheld from my safety consultant and my attorney. I resent the statement in Part C that I made false statements about "our efforts to obtain records from outside entities." It simply is not true. Also, I am deeply disturbed by the comments made by federal investigators in a public place about my operation and my integrity as a business owner. Apparently, these comments were so unflattering that the clerk of convenience store where this took place personally told me later that afternoon when I was in the store. This behavior is not only embarrassing to my company, and me but it also speaks poorly of the FMCSA and its apparent professionalism.
10. I believe that from the start of this investigation the federal investigator was out to get this company. The number of federal and state investigators was absolute overkill for a 25-truck operation. The demand for records was outrageous, especially for those records relating to Williamson Produce, a company I have no responsibility for. The demeanor towards my employees was unprofessional and at times abusive, and I think I was held to a different standard than any other motor carrier, particularly a new-entrant motor carrier.
11. This case was simple. The CR was instigated by a fatal accident. We are a 25-truck operation with the same records as any other motor carrier. I don't understand the "complexity" the government says exists in the review of my company. I don't see how it could take so many people to review so few records. I was in existence for three months. I believe the "complexity" here was how the investigator could hide an open-ended search for records (a process that was

drawn out to an unreasonable length of time because of my alleged obstruction) when in reality he was searching for a way to tie my company to Williamson Trucking—making me suddenly responsible for records and violations that have nothing to do with my company. This is backward reasoning in my mind. I was guilty before he even walked in the door. I can't accept this discriminatory treatment under the guise of safety and the public interest.

12. I asked my safety consultant to keep track of how long the investigators were in my business. We tracked it every day (Exhibit DD). They claim the outrageous amount of time the investigation lasted was due to our reluctance to turn over records. In fact, we handed over all records relevant to Williamson Transport and this investigation immediately. What we could not produce were records prior to our existence or records belonging to another company. It took weeks for me to convince investigators that I, as President of Williamson Transport, have custody of and responsibility for Williamson Transport and not any other company, more specifically Williamson Produce d/b/a as Williamson Trucking. There is no secret file drawer. There has been no merger. Williamson Produce might be next-door, but it doesn't mean my rating should suffer for WP's alleged violations—especially under some investigator's notion or this "substantial continuity" theory.

13. We have no record of any traffic violations received in a CMV for Billy Williamson. The one referred to by the government was indeed a speeding violation that occurred in his personal automobile, not a Williamson Transport vehicle—as the government alleges (Exhibit EE).

End of Affidavit

DATED this 15 day of December 2003.

LARRY MAYNOR

SUBSCRIBED AND SWORN to before me this 15th day of December 2003.

Notary Public for North Carolina

My Commission Expires:

October 22 2006

EXHIBIT AA

Attn: Jim

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

310 New Bern Avenue, Ste. 468
Raleigh, NC 27601

September 30, 2003

Mr. Larry Maynor
President
Williamson Transport Company Inc.
1501 Ralston St.
Wilson, NC 27893

Dear Mr. Maynor:

On September 16, 2003 our office initiated a compliance review on Williamson Produce Inc., doing business as Williamson Trucking Company (USDOT #90896) now known as Williamson Transport Company Inc. (USDOT 1131283). The reason for our Compliance Review is a fatal crash involving one of your company's commercial motor vehicles on August 7, 2003 in Virginia. Our legal staff has advised me that Williamson Transport Company Inc. is in fact a company name change and should be viewed as an extension of Williamson Produce Co./ Williamson Trucking, and that only one compliance review should be completed. The review is being conducted on Williamson Transport Company Inc. and will cover the 12 months preceding September 16, 2003.

MAJOR FACTS TO SUPPORT THIS DECISION:

1. Williamson Produce/Williamson Trucking owns vehicles currently being used by Williamson Transport.
2. Williamson Produce/Williamson trucking used drivers operating today in interstate commerce in the past 12 months.
3. You, as the President of Williamson Transport Company Inc., held a management position with Williamson Produce/Williamson Trucking.

Special Agent Dennis Matsopp has been assigned to lead the Investigation/Compliance Review and has made several requests during the review that are necessary to complete our investigation. To date certain requested records have not been made available, therefore delaying completion of the review. You and other company representatives have indicated that no records are available prior to June 1, 2003 since the company is no longer in business as of June 1, 2003. Based on the fact that Williamson Produce/Williamson Trucking did operate in interstate commerce in the preceding 12 months, these records are required to be maintained and made available for inspection/review during the Compliance Review.

Please review the attached list and make the records available for review no later than Friday, October 3, 2003. If the records are not available, please indicate so on the list as to why, i.e. destroyed, refused to provide, etc. Once the records have been reviewed, additional records may be requested to complete the review.

If you have any questions regarding this request, contact me at (919) 856-4378. Your immediate attention to this matter is requested.

Sincerely,

[signature]

Chris M. Hartley
Division Administrator

OCT-01-03 10:04 PM WILLIAMSON PRODUCE INC 252 291 6191 P.01

EXHIBIT BB

U.S. Department of
Transportation
**Federal Motor
Carrier Safety
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590
May 21, 2003

In reply refer to:
USDOT Number: 1131263
PIN: 0F03DI7F

DEBRA L HOOKS
WILLIAMSON TRANSPORT COMPANY INC
POST OFFICE BOX 3489
WILSON NC 27893

Dear Motor Carrier:

Your application seeking federal registration to operate in interstate commerce has been approved. Your USDOT number, personal identification number (PIN) and MC number, if applicable, can be found in the upper right hand corner of this letter. The USDOT number should be marked on your commercial motor vehicles as required by Section 390.21 of the Federal Motor Carrier Safety Regulations (FMCSRs). **A copy of this regulation is enclosed.**

As a new entrant, the Federal Motor Carrier Safety Administration (FMCSA) will evaluate your safety management practices through a safety audit and monitor your on-road performance for 18 months prior to granting you permanent registration. You must maintain minimum safety standards and comply with the FMCSRs and applicable Hazardous Materials Regulations (HMRs) in order to continue operating in interstate commerce during and after this 18-month period. Failure to comply with these requirements may result in the revocation of your permanent registration authority.

An FMCSA safety auditor will be contacting you to schedule the audit. The purpose of the safety audit is to provide you with educational and technical assistance and to gather safety data needed to make an assessment of your safety performance and adequacy of your basic safety management controls. The auditor will review a sample of your safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements specified in Appendix A of Part 385 of Title 49 of the Code of Federal Regulations (49 CFR Part 385).

Upon completion of the audit, the auditor will review the findings with you. This discussion will be followed up within 45 days with a letter advising you whether or not FMCSA has determined that you have adequate basic safety management controls. **In accordance with 49 CFR 385.337, failure to permit a safety audit to be performed on your operations may result in the revocation of your registration and/or the penalty provisions in 49 U.S.C. 521(b)(2)(A).**

Please note that you will be required to file an updated motor carrier registration form, the MCS-150 (Motor Carrier Identification Report), every two years. **A copy of this regulation is enclosed.**

You can update your MCS-150 in one of two ways:

1. **Internet on-line updating process.**

   Update electronically on the FMCSA Registration Website at *http://www.safersys.org*. Your USDOT number and PIN, located at the upper

(Over)

EXHIBIT CC

Williamson Transport Co., Inc.
P. O. Box 3489
Wilson, NC 27895
Phone (252) 291-4100
Fax (252) 291-8107

October 14, 2003

US DOT/FMCSA
310 New Bern Ave.
Room 468
Raleigh, NC 27601

Attention: Shirley McGuire

Dear Ms. McGuire:

Superseding all your previous demands and per your verbal request this day, please accept the below information, in order to close the review of my company. The approximate mileage and freight for Williamson Transport Co., Inc. are as follows:

Mileage	740,000
Freight revenue	$555,000.00

There is no profit anticipated for fiscal calendar year 2003 and 2004 because of the outstanding loans that I needed to start the company.

Thank you for your anticipated cooperation.

Larry Maynor
President

EXHIBIT DD

Williamson Transport Company, Inc.
P.O. Box 3508
Wilson, NC 27895-3508

October 3, 2003

USDOT/FMCSA
310 New Bern Avenue
Suite 468
Raleigh, NC 27601
Attn. Christopher M. Hartley
Division Administrator

Dear Mr. Hartley,

Thank you for the opportunity to assist your representatives in conducting an audit of Williamson Transport Co., Inc. beginning September 16th, 2003 up to and including their most recent visit of October 3rd, 2003.

We believe that the approximate 130 man-hours invested by your agents in the audit, not to mention the travel time estimated at 75 hours, and the use of several HP/DMV officers to conduct vehicle inspections in and around our facility over a period of 4 days with their approximate 192 man hours, would be sufficient time to have conducted and completed their assignment on a company that has an average of 25 motor vehicles, 30 drivers, and a small staff of 4 to conduct daily business.

The latest visit of October 3rd, 2003 by 2 of your representatives was anticipated to be a final request for documents and the audit was to be completed however this was not accomplished much to our chagrin.

We had over 95% of what was available, per your request, ready for review and in the process of obtaining the balance of the request when within an hour after their arrival they suddenly left the premises without any warning or reason for their departure with their last words being "We'll see you Monday".

We have cooperated with your requests for supplying documents and associated information while still trying to remain competitive and respond to our customers needs. Since we are a new minority owned company that began operations in June of this year we find that your demands are overly burdensome and have impacted our ability to operate as efficiently as possible.

Upon the advice of our legal counsel, and supported by your legal representative in the Southern Service Center in Atlanta, GA, we will not be able to accommodate your representatives beginning Monday, October 6th, 2003 until further notice. Should there be a need for any additional documentation, please forward a written specific request and we will make every attempt to comply.

We regret any inconvenience this may cause and anticipate a mutually agreeable conclusion to this matter shortly.

Regards,

Larry Maynor
Williamson Transport Co., Inc.

EXHIBIT EE

STATE OF NORTH CAROLINA
REGISTRATION CARD

NC LIC NUMBER	VALID THRU	
LVW1663	10/15/2002	
VEHICLE ID #		GROSS WT
1G6KS52Y7TU805433		
MAKE/SERIES	TITLE #	
CADI	774028982538060	

EQUIP #	COUNTY	STYLE	YEAR	FUEL	TOTAL FEE
	WILSO	4S	1996	G	20.00

CLASSIFICATION	VEHICLE BRAND
PRIVATE/PASS VEH	

CUSTOMER ID # OWNER 1	CUSTOMER ID # OWNER 2
000002914248	

WILLIAM ROYCE WILLIAMSON

PO BOX 3508
WILSON NC 27895-3508

M12 - MILLERS MUTUAL FIRE INSURANCE COMP
INSURANCE COMPANY AUTHORIZED IN NC

6000283
POLICY NUMBER

SIGNATURE

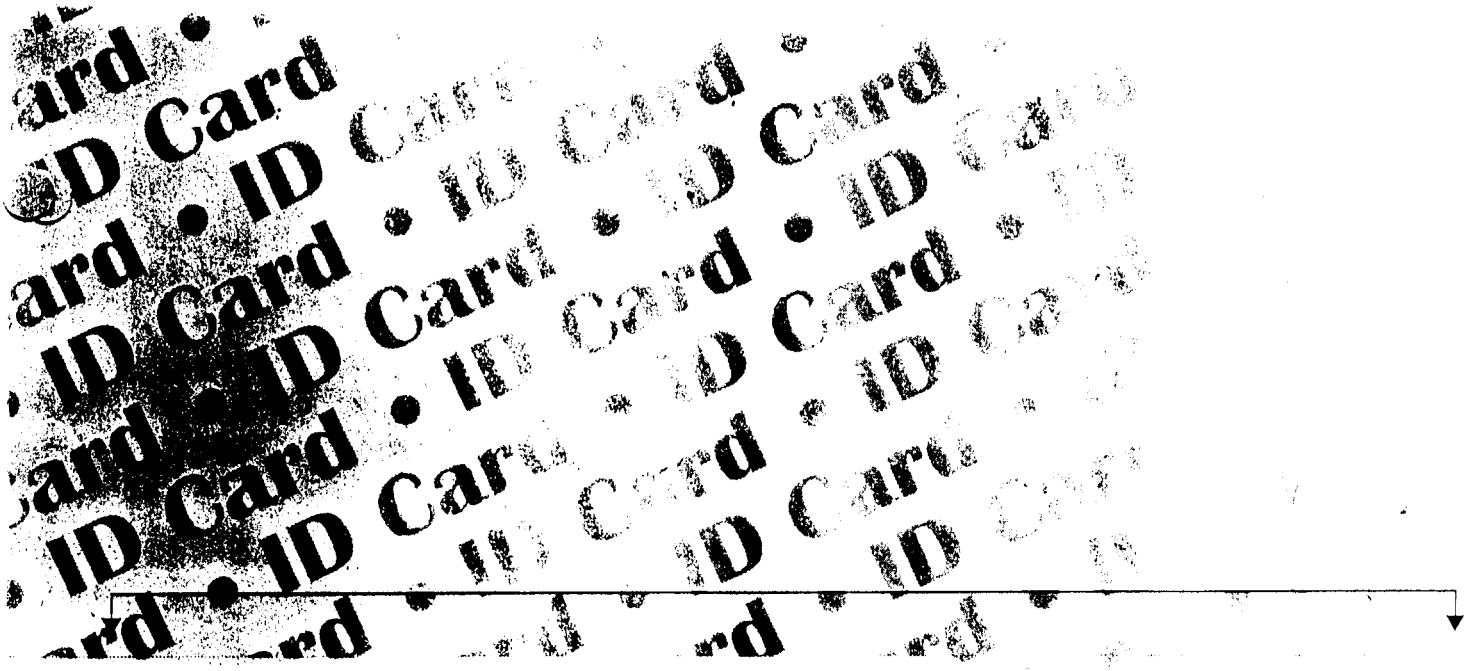
1G6KS52Y7TU805433

NC DIVISION OF MOTOR VEHICLES
RECEIPT OF FEES PAID

WILLIAM ROYCE WILLIAMSON
License 20.00 1996 CADI 4S
1G6KS52Y7TU805433
774028982538060
060 10/25/2001 T1C0604

TOTAL 20.00 CHCK

31126260



NORTH CAROLINA (STATE) INSURANCE IDENTIFICATION CARD

COMPANY NUMBER: 14990

COMPANY: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
AU90102084	03/14/03	03/14/04

YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
96	CADILLAC S	1G6KS52Y7TU805433

AGENCY/COMPANY ISSUING CARD

STANDARD INS & RLTY 6356
PO BOX 8105
ROCKY MOUNT NC 27804

INSURED

WILLIAMSON PRODUCE INC
PO BOX 3508
WILSON NC 27895

71 0053 05 96 SEE IMPORTANT NOTICE ON REVERSE SIDE

NORTH CAROLINA (STATE) INSURANCE IDENTIFICATION CARD

COMPANY NUMBER: 14990

COMPANY: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
AU90102084	03/14/03	03/14/04

YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
90	TOYOTA SED	4T1SV21E0LU264103

AGENCY/COMPANY ISSUING CARD

STANDARD INS & RLTY 6356
PO BOX 8105
ROCKY MOUNT NC 27804

INSURED

WILLIAMSON PRODUCE INC
PO BOX 3508
WILSON NC 27895

71 0053 05 96 SEE IMPORTANT NOTICE ON REVERSE SIDE Form 70-2556 (Ed. 09-

VIT -TTC4- 0901-744- [illegible]

In The General Court Of Justice District Court Division

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

Signature Of Magistrate/Deputy/Assistant/CSC

Date

[illegible] defendant has been arrested without a warrant and there is probable cause for the [illegible] defendant on the stated charges. This Magistrate's Order is issued upon information [illegible] by the named officer. A copy of this Order has been delivered to the defendant [illegible]

COURT USE ONLY

District Attorney

Attorney For Defendant At Time Of Trial Or Plea

Appointed / Retained / Waived

PRIOR CONVICTIONS:

No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3

MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3

☐ V/D _____

☐ not guilty/resp.

PLEA: ☐ guilty/resp. ☐ no contest

☐ guilty/resp. ☐ no contest

☐ not guilty/resp.

VERDICT/ FINDING: ☐ guilty/resp. _____

☐ guilty/resp. _____

☐ not guilty/resp. _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the verdict/finding, it is **ORDERED** that the defendant: ☐ pay costs and a fine/penalty of $ _____ ☐ be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. ☐ The Court finds that a danger ☐ shorter period of probation than specified in G.S. 15A-1343.2(d), is necessary. ☐ Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the following conditions: ☐ (1) that he/she abide by all regular conditions of unsupervised probation; ☐ (2) pay costs and a fine/penalty of $ _____ ☐ (3) surrender his/her drivers license and not operate a motor vehicle for a period of _____ or until relicensed by DMV, whichever is later, except as may be permitted in a limited driving privilege; ☐ (4) Other: _____

☐ It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs. ☐ case be consolidated for judgment with _____

☐ COMMITMENT. It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant in open court, gives notice of appeal to the Superior Court. ☐ The current pretrial release order is modified as follows:

Signature Of District Court Judge

Date

Signature Of Deputy/Assistant/CSC

Date

I certify that this Judgment is a true copy.

File No. [redacted]

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

Washington N.C.

Date Of Week	Month	Day	Year	Time
Monday	8	18	23	930

☒ AM ☐ PM

☒ D.L. ☒ D.C.I. ☐ Other No. Of Charges 3

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant: William Royce Williamson

Address: 3001 WOLFTRAP DR NW

City: Wilson State: NC Zip: 27896

Drivers License No.: 29142548 State: NC CDL: ☐ Class: A

Race: W Sex: M Date Of Birth: 12-13-35 Age:

Social Security No. Of Defendant: — Telephone No.: —

Vehicle License No.: LWW-1663 State: NC

Vehicle Type: P Trailer Type: — CMV: — Haz. Mat.: — Make: Cadi Year: 96

Name And Telephone No. Of Defendant's Employer:

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card): —

DEPARTMENTAL USE ONLY

Officer: E. Cain No.: 945 Troop: A

District: 4 ☒ N.C. Patrol ☐ _____ Police/Sheriff

Area	Wea.	Vis.	Traffic	Accident	Speed
4	0	5	M	No	Pacing

On Highway No./Street: 264 E SHP Code: 1

In Vicinity/City Of: Wilson At/Near Intersection: Exit 116

Wt. Chemical Analyst ☐ _____ AC ☐ Refused

DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

STATE OF NORTH CAROLINA Beaufort County

The undersigned officer has probable cause to believe that on or about Saturday 2:30 (a.) (p.) m., the 26 day of July, 2003, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☒ ☐ 1. At a speed of 70 MPH in a 50 MPH zone. G.S. 20-141.

☐ 2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ 3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1. **[NOTE: *If under age five and less than 40 pounds, a child passenger restraint system is required.*]**

☐ 4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1.

☐ 5. While subject to an impairing substance. G.S. 20-138.1.

☐ 6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ 7. While the defendant's drivers license was revoked. G.S. 20-28.

☐ 8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ 9. Without displaying thereon a current approved inspection certificate, such vehicle requiring registration in North Carolina. G.S. 20-183.8. Month expired _____

☐ 10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ 11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158.

☐ 12. By entering an intersection while a stop light was emitting a steady red light for traffic in defendant's direction of travel. G.S. 20-158.

☐ 13. By failing to yield right of way in obedience to a duly erected (stop sign) (flashing red light) (yield sign). G.S. 20-158; -158.1.

☐ 14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7. **[NOTE: *Strike through "operate a (motor) vehicle" and "(public vehicular area)" at top of citation.*]**

☐ ☐ 15. _____

☒ ☒ 16. And on or about Saturday 2:30 (a.) (p.) m., the 26 day of July, 2003, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Inspection Violation

Expires 12-2003

G-30-183.8

Date	Signature Of Officer
7-26-03	E. Cain

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date	Signature Of Defendant

AFFIDAVIT OF BRYLSKI

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:	)	
WILLIAMSON TRANSPORT CO., INC.	)	**Docket No. FMCSA-2003-16485**
Respondent	)	

SECOND AFFIDAVIT OF JAMES J. BRYLSKI

STATE OF NORTH CAROLINA)
: ss.
County of Wake)

I, JAMES J. BRYLSKI, having been first duly sworn upon oath, deposes, and says voluntarily the following:

1. At the closeout of the compliance review (CR), I asked Investigator Dennis Melsopp for a copy of his notes in support of the CR and was refused. He advised me to make a request under the Freedom of Information Act. I find it perplexing that my client would be refused disclosure of a document that the government has then used as evidence against him to impose an unjustified and capricious "Unsatisfactory" safety rating based upon another company that has been out of business. It's been my experience that investigator notes have been disclosed in other cases upon request, so I don't understand this investigator's refusal.

2. Because we were never privy to Part C notes and because the matter now sits before the Chief Safety Officer, we have no ability to contest the investigator's findings and concerns—a document that Investigator Melsopp clearly relies upon for the strength of his case. We fear the weight the Chief Safety Officer might give Part C in deciding this matter—especially since the Respondent's counsel had no opportunity to cross-examine the investigator on how the document was prepared, why its contents were not disclosed until Agency counsel submitted its response, and why the contents appear revised after the fact (i.e. several points in the document mysteriously coincide with Agency counsel's legal arguments). Since the likelihood of such a scenario is probable, it bothers me that the Agency would not disclose openly such a pivotal document on such a novel legal theory in the motor carrier industry. Furthermore, my hands have been tied by such a circumstance, preventing me from properly defending my client.
3. Investigator Melsopp also claimed that an investigation of a 25-truck operation legitimately took four weeks because of the following: that Respondent denied him access to records and then delayed the delivery of those records, that Respondent would not make available requested documents existing prior to June 1, that the Respondent failed to make certain individuals available for interview, and that the Respondent gave false statements about obtaining records from outside entities. For the record, Respondent was not uncooperative; rather, it stood by the fact that no operational documents prior to June 1 existed for Williamson Transport and that it was impossible for them to produce records from another company. I am disturbed by charges in the CR that exist before June 1

when these drivers had a different employer. There's no good reason my client should be held to a level of responsibility that includes driver actions with other employers. In accordance with regulations, Respondent provided all necessary previous 12-month records (e.g. drug and alcohol testing, driver qualification files, vehicle maintenance records, and payroll information). There is no back file of logs, bills of lading, or any supporting document relative to everyday operations with another company. In my experience, there was no regulatory obligation for Respondent to provide such information, and to demand so far exceeds the burden of responsibility for a motor carrier.

4. To avoid the appearance of a link between Williamson Produce/Trucking with Williamson Transport as a new company, Williamson Transport took careful pains to follow the letter of the law in establishing itself as a new carrier. That is why Respondent filed a request for new DOT and MC numbers with FMCSA, acquired new insurance (albeit with the same carrier) (Exhibit FF), and hired new drivers (though some were former Williamson Produce/Trucking drivers). When the request was granted, Williamson Transport engaged in interstate commerce with new numbers as a new entrant carrier, never thinking that it would have to defend itself against the very agency that granted them authority to do business in the first place.
5. At the time of the unfortunate fatal accident in August, Williamson Trucking markings were found on the side of the Williamson Transport vehicle, thus leading police to believe this was a Williamson Trucking employee. In truth, Respondent was slow in getting new markings on the vehicles it was leasing from

Williamson Produce, and indeed, the driver was an employee of Williamson Transport. This is not an acute or critical violation of any FMCSR, and so I don't see why such an issue is being made of it here—other than to erroneously link the two companies.

6. Aside from Part C issues and the ultimate findings in Investigator Melsopp's report, I also am disturbed by some of the investigative methods. Requests to use management for information were repeatedly ignored, as investigators routinely approached drivers and office staff with probing questions. In one instance, an investigator, Mr. Melsopp, made a request for documents, from a driver who had that day returned from a trip and was told that they had not been separated for each department, payroll, fuel, etc., he then tried to snatch it from the employee's desk. On October 3, without explanation, investigators left Respondent's offices and were overheard in a nearby convenience store disparaging my client's company and his employees. The comments were so disturbing that the clerk personally told my client about her concerns that such derogatory remarks were being made in a public setting. I share such a concern myself and ask perplexingly, is this the way the government conducts investigations? Professionalism aside, I believe the larger matter of fair treatment becomes an issue when open animosity exists among investigators and is directed toward the carrier.

7. With regard to the North Carolina State Patrol's investigation of intrastate commerce on the part of Williamson Transport, I submit that Respondent engages in only *interstate* commerce. The presence of 12 state investigators—excessive

for any 25 trucks operation—I find unnecessary and intimidating. Williamson Transport does business exclusively in interstate commerce from the state of North Carolina, and its unfortunate fatal accident occurred in Virginia. So I ask another question: what exactly was the State Patrol investigating? Investigator Melsopp claims they were conducting CMV inspections on premise, looking for "intrastate" violations. Why? They had no reason to be there, unless they were honoring a request from the Feds. Any violations found would have been "interstate" in nature, and if they indeed were there on invitation, Investigator Melsopp should have disclosed this information with solid reasoning to support such a need (Exhibit GG).

8. In fact, the opposite is true. In Part C, the investigator claims that six North Carolina State Highway Patrol officers "assisted" in the federal investigation, yet in his declaration, Melsopp makes the unequivocal claim that the state patrol investigation was "entirely separate and independent from the FMCSA." In my mind, such discrepancies call into question why the State Patrol should have been involved at all. Further, their conclusions have no relevancy to the safety rating process whatsoever.
9. For purpose of 385.17 review, in a letter from Division Administrator Chris Hartley, dated November 2002 (sic), Administrator Hartley advises Respondent to list corrective action taken with regard to violations contained in the CR. My response is WHY? These are alleged violations that occurred before Williamson Transport was a motor carrier (Exhibit HH). For example, the Agency cites Mary Solberg for a violation of §382.301(a), when Williamson Transport never

employed her. I ask sincerely how this motor carrier can take corrective action in response to this violation? The majority of other violations occurred before June 1, 2003, the date that Williamson Transport became active as a motor carrier. The same rationale applies also to drivers Henry Jordan, Raymond Scott, and Jimmie Jackson.

10. According to § 390.5, Driver George Pope was operating a farm vehicle. It was registered as a farm vehicle for purposes of transporting agricultural products and supplies/equipment not used in the operation of a for-hire motor carrier. It did not carry hazardous materials requiring placarding either. The vehicle registration card proves the vehicle is a farm vehicle; Driver Vehicle Examination Report shows the vehicle was empty at the time of inspection; a NC Tax Identification document indicates the owner, location, use, and value of the farm parcel that the vehicle serves; and an aerial picture of the farm indicates it is within 150 air miles of the vehicles use (Exhibit II).
11. The accusations contained in Part C concern me greatly due to the public nature of this review and its effects on any future clients. If these are the types of comments he puts in writing, what does he say in a public setting about me and other clients or any other individuals?

End of Affidavit

DATED this 16th day of December 2003.

JAMES J. BRYLSKI

SUBSCRIBED AND SWORN to before me this 16 day of December 2003.

Notary Public for North Carolina

My Commission Expires:

12-17-2006

EXHIBIT FF

CERTIFICATE OF INSURANCE

Michael P. Hair & Assoc.
P.O. Box 472224 • Charlotte, NC 28247-2224
Telephone (704) 543-0381 • FAX (704) 543-0384

INSURED Phone (252)243-6700

WILLIAMSON TRANSPORT COMPANY, INC.
PO BOX 3489
WILSON NC 27893

Fed ID #: MC #

ISSUE DATE: 7-2-2003

PRODUCER:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	COMPANY/POLICY # - EFFECTIVE & EXPIRATION DATES	LIMITS
AUTOMOBILE LIABILITY ☐ Any Auto ☒ All Owned Autos ☐ Scheduled Autos ☒ Hired Autos ☒ Non-owned Autos ☐ Garage Liability ☐ Other	**CANAL INSURANCE COMPANY** POLICY NUMBER: 378245 POLICY PERIOD FROM: 10-1-2002 TO: 10-1-2003	COMBINED SINGLE LIMIT $1,000,000 BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE
GENERAL LIABILITY ☐ Commercial General Liability ☐ Claims Made ☐ Occur ☐ Owner's & Contractors Prot. ☐	POLICY NUMBER: POLICY PERIOD FROM: TO:	GENERAL AGGREGATE PRODUCTS-COMP/OP AGG. PERSONAL & ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED. EXPENSE (Any one person)
EXCESS LIABILITY ☐ Umbrella ☐ Other Than Umbrella	POLICY NUMBER: POLICY PERIOD FROM: TO:	EACH OCCURRENCE AGGREGATE
MOTOR TRUCK CARGO	POLICY NUMBER: POLICY PERIOD FROM: TO:	PER VEHICLE DEDUCTIBLE REEFER (IF APPLICABLE)
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY	POLICY NUMBER: POLICY PERIOD FROM: TO:	STATUTORY LIMITS EACH ACCIDENT DISEASE-POLICY LIMIT DISEASE-EACH EMPLOYEE
PHYSICAL DAMAGE	**EMPIRE FIRE & MARINE INSURANCE COMPANY** POLICY NUMBER: CL 482780 POLICY PERIOD FROM: 10-1-2002 TO: 10-1-2003	FIRE, THEFT, CAC & COLLISION- $2,500 DED; TRAILER INTERCHANGE $20,000 LIMIT/$2,500 DED

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER

PROOF OF INSURANCE

Fax Number:
252-291-8107

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Michael P. Hair

EXHIBIT GG

Michael F. Easley
Governor
Bryan E. Beatty
Secretary
Richard W. Holden
Colonel

Location:
512 N. Salisbury Street
Raleigh, NC
(919) 733-7952

Mailing Address:
4702 Mail Service Center
Raleigh, NC
27699-4702

North Carolina Department of Crime Control & Public Safety

Division of State Highway Patrol

24 November 2003

Larry Maynor
Williamson Transport Co., Inc.
Post Office Box 3489
Wilson NC 27895

Dear Mr. Maynor:

Your letter to Governor Michael F. Easley has been forwarded to this office for response. You state that a SHP Motor Carrier Enforcement Officer issued a citation (Citation 3298371-0) to Williamson Transport, Inc. for certain Out-of-Service violations (No Operator's License-Non-CDL, Steering Mechanism, & Low Pressure Warning Device), and that your company received civil fines in the amount of $280.00. You further state that your company should not have received these fines, and you claim that your company is being held responsible for violations that should be assessed to Williamson Produce, Inc.

The State Highway Patrol's review of this matter reveals that on 22 September 2003, Officer C. L. Pope stopped a 1984 International Tractor (VIN# 2HTNGTVR2ECB[illegible]1478) in Wilson County, for the purposes of conducting a motor carrier inspection. The driver, Mr. George Pope, advised the Charging Officer that he was returning from making a delivery at the local landfill and that he was employed by Williamson Transport Co. Inc.

Documentation acquired in the investigation revealed the Federal Motor Carrier Safety Administration (FMCSA) recognizes Williamson Produce Inc. and Williamson Transport Co. Inc. as being the same business, and that Williamson Transport Co. Inc. was, at the time of the stop, operating with a name change, under a new USDOT number. Upon examination, Officer Pope discovered that the truck was registered to Williamson Produce Inc., but that it was conducting business as Williamson Transport Co. Inc. Under the Federal Motor Carrier Safety Regulations, the vehicle was subject to inspection, and violations were discovered that were not in compliance with the Federal Motor Carrier Safety Regulations and The North American Standard Out-of-Service criteria, and was, therefore, assessed civil penalties. North Carolina law requires all fines to be assessed against the motor carrier.

The mission of the North Carolina State Highway Patrol is to ensure safe, efficient transportation on our streets and highways, reduce crime and respond to natural and manmade disasters. This mission will be accomplished, in partnership with all levels of government and the citizens of North Carolina, through quality law enforcement services based upon high ethical, professional and legal standards.

An internationally accredited agency

Our investigation reveals that the motor carrier inspection in this matter was performed in compliance with Federal and State law. Officer Pope's actions were performed according to North Carolina Highway Patrol Policy and The North American Standard Inspection Procedures. The North Carolina General Statutes provides a venue for motor carriers to protest the issuance of citations and penalties. This information is provided on the reverse side of the Out-of-Service Fine Citation. Our records indicate that you have protested the civil penalties your company received on 22 September 2003, and Captain G. E. Gray, Jr., SHP Motor Carrier Safety Assistance Program Administrator, responded to you. In order for your protest to be reviewed, the civil penalty must be paid in full prior to the initiation of the protest procedures (N.C. Gen. Stat. § 20-91.1). Our records indicate that you did not pay the penalty assessed when you sent your Letter of Protest. The law requiring such payment is provided, below, for your review:

> *Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Secretary of Crime Control and Public Safety; and if the same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides.*

Should you have further questions concerning this matter you may contact Captain George E. Gray, Jr., at (919) 715-8683.

Sincerely,

Colonel Richard W. Holden
Commander

RWH:cjc

cc: Governor Michael F. Easley
Secretary Bryan E. Beatty
Major C. J. Carden, Jr.
Captain G. E. Gray, Jr.

EXHIBIT HH

U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

310 New Bern Avenue, Ste. 468
Raleigh, NC 27801

November 18, 2002

Larry Manor
Williamson Transport Co., Inc.
1501 Raleton Street
Wilson, NC 27895

Dear Mr. Maynor

This letter is in response to your request for a follow-up Compliance Review to upgrade your unsatisfactory rating. We have reviewed your request and provide the following as guidance based on the 385.17 review process.

Your request failed to include a written description of corrective actions taken to prevent future violations. We require that you provide an explanation of corrective actions taken to correct individual violations along with all documentation, as mandated by 385.17(c) (See attachment). The FMCSA will make a final determination on your request based upon that information.

Your contention that you are a new company, and all information prior to June of 2003 is not relevant, was already addressed in a prior correspondence with your company. I will reiterate, the FMCSA does not recognize Williamson Transport Co., Inc. as a new entity. The carrier history associated with Williamson Produce will continue to be applied to Williamson Transport Co., Inc. This decision was based on guidance from our legal staff.

Please forward all of the requested information so that we may set at date for the follow-up compliance review to be conducted.

Sincerely,

Chris M. Hartley
Division Administrator

cc: file

EXHIBIT II

Farm vehicle driver means a person who drives only a commercial motor vehicle that is —

(a) Controlled and operated by a farmer as a private motor carrier of property;

(b) Being used to transport either —

(1) Agricultural products, or

(2) Farm machinery, farm supplies, or both, to or from a farm;

(c) Not being used in the operation of a for-hire motor carrier;

(d) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle; and

(e) Being used within 150 air miles of the farmer's farm.

STATE OF NORTH CAROLINA
REGISTRATION CARD

NC LIC NUMBER XA5116	VALID THRU 02/15/2004	
VEHICLE ID # 2HTNGTVR2ECB11472		GROSS WT 25,000
MAKE/SERIES INTL	TITLE # 779962031010060	

GROUP #	COUNTY	STYLE	YEAR	FUEL	TOTAL FEE
	WILSO	TK	1984	D	146.00

CLASSIFICATION FARM VEHICLE	VEHICLE BRAND
CUSTOMER ID # OWNER 1 [illegible]	CUSTOMER ID # OWNER 2

WILLIAMSON PRODUCE INC

PO BOX 3500
WILSON NC 27895-3300

FB4 - PENN MILLERS INS CO
INSURANCE COMPANY AUTHORIZED IN NC

BAC2560330503
POLICY NUMBER

SIGNATURE

2HTNGTVR2ECB11472

NC DIVISION OF MOTOR VEHICLES
RECEIPT OF FEES PAID

WILLIAMSON PRODUCE INC
License 111.00 1984 INTL TK
Title 35.00 2HTNGTVR2ECB11472
HUT 36.00 779962031010060
006 04/11/2003 T1C0603

TOTAL 182.00 CASH

NOTE: THE WEIGHT DECLARED ON THIS REGISTRATION MUST BE SUFFICIENT TO COVER THE WEIGHT OF THE VEHICLE PLUS ANY AMOUNT HAULED OR PULLED. IF THE [illegible] WEIGHT [illegible] YOU ARE SUBJECT TO A CITATION.

#37413914

North Carolina DMV
1100 New Bern Ave
Raleigh, NC 27697
Phone: (919)861-3186

DRIVER VEHICLE EXAMINATION REPORT

Report Number: NC0085000502
Inspection Date: 09/22/2003
Start Time: 12:15 PM **End Time:** 3:31 PM
Insp. Level: 1-Full,

WILLIAMSON TRANSPORT INC
1501 RALSTON STREET
WILSON, NC 27893
Phone#: (252)291-4100 **Fax#:**
USDOT#: 1131263 **ICC#:**
State#:

Driver: POPE, GEORGE D
License#: 2581177 **State:** NC
Date of Birth: 09/12/1946
CoDriver:
License#: **State:**
Date of Birth:

Location: WILSON **MilePost:** N/A **Shipper:** PRIVATE
Highway: RALSTON ST AND THORNE ST **Origin:** WILSON,NC **Bill of Lading:** NONE
County: WILSON **Destination:** WILSON,NC **Cargo:** Empty

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TR	INTL	1984	NC	AX5166	D406	2HTNGTVR2ECB11472	26,001		

BRAKE ADJUSTMENTS

Axle #	1	2
Right	1 1/2	1 7/8
Left	1 1/4	2 1/4
Chamber	C-20	C-30

VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Violations Discovered
391.41(a)		D	N		N	No medical certificate in driver's possession
383.23(a)(2)		**D**	**Y**	**1688364-6**	N	**Operating a Commercial Motor Vehicle without a CDL**
392.2		D	N		N	Local laws (general), fail to carry driver's license and truck registration
393.51		**1**	**Y**		**U**	**No or defective brake warning device**
396.5(b)		1	N		N	Oil and/or grease leak, engine
393.9		1	N		N	Inoperable lamp (other than head/tail), 1 of 5 clearance lamp
393.9T		1	N		N	Inoperable tail lamp, left side
393.9H		1	N		N	Inoperable head lamps,high beams
390.21(a)		1	N		N	Not marked in accordance with regulations, improper name and DOT number
396.3(a)(1)		1	N		N	Inspection/repair and maint parts & accssries,air leak at proper connection from of truck.
396.3A1BA		**1**	**Y**		**U**	**Brake-out of adjustmentaxle 2 left rear**
396.3(a)(1)		**1**	**Y**		**U**	**Inspection/repair and maint parts & accssries, more than 1/8 inch play in draglink and steering arm ball socket joints(1/4)**

Haz Mat: No HM Transported. **Placard:** No **Cargo Tank:**

Special Checks: No Data for Special Checks.

Miscellaneous:
CDL REQUIRED Y/N: Y; POST CRASH INSP. Y/N: N; FEDERAL INSP. DATE: 10/00/2002; GPS LATITUDE: N/A; GPS LONGITUDE N/A; FEIN/SSN #: NONE; FUEL DECAL #: NONE; IFTA STATE: NC; OOS FINES ASSESSED Y/N: Y; (1) OSS CITATION #: 3298371-C DRIVER OOS FINES: $30.00; VEHICLE OSS FINES: $250.00; HAZMAT OOS FINES: $0.00; TOTAL OOS FINES: $280.00; PAYMENT RECEIPT #: EXT.CREDIT; N.C. REPLACEMENT SEAL #: N/A; ENF 500 REPORT #: N/A;

Report Prepared By: C L POPE Badge #: 3259
X _____

Copy Received By: POPE, GEORGE D
X _____ To Sign

NC0085000502

WILLIAMSON, WILLIAM R
391 0050015
000019588095
WILSON COUNTY

C SW SWAF(2)
76.96ACRES M L GARDNER (BELL

3780 54 2576.000
MAP BLK LOT
ID NO: 391 0050015
CARD NO. 2 OF 2
76.96AC 76.960AC SRC= 4INS

APPRAISED BY 20 ON 08/11/1999 00300 NEIGHBOR

TW-09 C-0 EX- AT- LAST ACTION 20000324

CONSTRUCTION DETAIL

MARKET VALUE						DEPRECIATION						CORRELATION OF VALUE
USE	MOD	EFF. AREA	QUAL	BASE RATE	REPL. COST NEW	EYB	AYB	NORM	ECO	FUN	PCT. COND	CREDENCE TO MARKET
5000												DEPR. BUILDING VALUE
RURAL HOME SITE												TOTAL DEPR. OB/XF VALUE
												TOTAL LAND VALUE - MARKET
												TOTAL MARKET VALUE - CARD
												FARM USE 72,93
												TOTAL APPRAISED VALUE - CARD
												TOTAL APPRAISED VALUE - PARCEL 144,36
												TOTAL FARM VALUE 72,93
												TOTAL FARM PARCEL 72,93

PRIOR PERMIT INFO

SALES DATA

OFF. RECORD BOOK	OFF. RECORD PAGE	DATE MO	DATE YR	TYPE FIN.	V/U	V/I	INDICATED SALES PRICE

NOTES

DE	DESCRIPTION	LTH	WTH	UNITS	UNIT PRICE	ORIG PCT COND	I/B	AYB	EYB	ANNO DEPR RTE	PCT. COND	OB/XF DEPR. VALUE

TOTAL OB/XF VALUE

BUILDING DIMENSIONS

HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRONTAGE	DEPTH	DEPTH /SIZE	LND MOD	COND FACT	OTHER ADJUST AND NOTES	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJST	ADJUSTED UNIT PRICE	LAND VALUE	LAND NOTES
FARM-SFR	6810	AR			L 1.000	05	L 1.00		11,250.00	1.000	AC	1.000	11,250.000	11,250	
AGRI II	5210	AR			L 1.000	05	L 1.00		775.00	58.000	AC	1.000	775.000	44,950	
FRST I	6110	AR			L 1.000	05	L 1.00		390.00	17.960	AC	1.000	390.000	7,004	
TOBACCO	6901		129	2042	L 1.000	05	L 1.00	TR2688	2.00	1,599.000	LB	1.000	2.000	3,198	
TOBACCO	6901		263	2041	L 1.000	05	L 1.00	TR2848	2.00	3,262.000	LB	1.000	2.000	6,524	

TOTAL LAND DATA

1527
ASPEN GROVE CH. RD.

AFFIDAVIT OF RIDDICK

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:	
WILLIAMSON TRANSPORT CO., INC.	**Docket No. FMCSA-2003-16485**
Respondent	

AFFIDAVIT OF GAYNELL RIDDICK

STATE OF NORTH CAROLINA)
: ss.
County of Wilson)

I, Gaynell Riddick, having been first duly sworn upon oath, deposes, and says voluntarily the following:

1. I am a clerk at the Happy Store on Highway 301 in Wilson, North Carolina. I noticed two individuals who I later learned were Federal Investigators Dennis Melsopp and Michael Foley with the Federal Motor Carrier Safety Administration. These gentlemen frequented our store, particularly during the dates of September 16 and October 3, 2003.
2. On or about October 3, 2003, I overheard a rather loud conversation between Mr. Melsopp and Mr. Foley. Mr. Melsopp was saying angrily that Mr. Larry Maynor

and his consultant were lying and withholding records from them, and he was going to get them.

3. I became concerned over these ugly remarks to the point that I told Mr. Maynor about them when he came to the store later that afternoon. I was personally embarrassed and sad for Mr. Maynor that officials of U.S. government would carry on so in a public place and say such hurtful things.

End of Affidavit

DATED this 15th day of December 2003.

Gaynell Riddick

Clerk's Name

SUBSCRIBED AND SWORN to before me this 15th day of December 2003.

Debra L. Hooks

Notary Public for North Carolina

My Commission Expires:

October 10, 2006.

AFFIDAVIT OF SCAPELLATO

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:	)	
WILLIAMSON TRANSPORT CO., INC.	)	**Docket No. FMCSA-2003-16485**
Respondent	)	

AFFIDAVIT OF JAMES E. SCAPELLATO

STATE OF SOUTH CAROLINA)
: **ss.**
County of Charleston)

I, JAMES E. SCAPELLATO, having been first duly sworn upon oath, deposes, and says voluntarily the following:

1. During the period of October 1-3, I had numerous telephone conversations with Ms. Deborah Stanziano, trial attorney FMCSA. I informed Ms. Stanziano that I represented Williamson Transport, a motor carrier located in Wilson, North Carolina, as well as Williamson Produce Company with regard to an outstanding Notice of Claim (Docket # FMCSA-2003-14415). I discussed with her my concern over the lengthy compliance review (CR) going on with Williamson Transport during that period of time.

2. I specifically told Ms. Stanziano that Williamson Transport was an independent company, separate and apart from Williamson Produce, that Williamson Transport had followed the Agency's regulations and acquired its own operating authority and DOT number to engage in interstate commerce as a motor carrier. I also told her that Williamson Produce was out of the motor carrier business and its relationship with Williamson Transport was a truck leasing arrangement.
3. At no time during those conversations did she inform me of the government's intent to consider Williamson Produce and Williamson Transport one and the same company as the Investigator claims in Part C to his compliance review. Knowing that I represented both companies and knowing my belief that both companies are independent of one another, I find it perplexing why Attorney Stanziano would not disclose at that time the Agency's legal position relative to these corporate entities. This is particularly odd since Investigator Melsopp claims in Part C of his compliance review that he was following her advice. Since the Agency's entire case to the Chief Safety Office rests on the application of substantial continuity to both Williamson Produce and Williamson Transport, I would like an explanation as to why Ms. Stanziano would withhold information that compromises my clients' due process rights.
4. Reading the CR served on Williamson Transport, I find it difficult to determine if substantial continuity is a factor in this case because it is never mentioned. Since Part C was not a part of the CR served on Respondent, the substantive basis for the unsatisfactory safety remains a mystery (all violations outside of the accident factor occurred prior to Williamson Transport's inception as a company). Only in

hindsight did I discover that Williamson Produce's miles were added to Williamson Transport's, and only in reading counsel's brief and exhibits did I discover Part C. Since I consider this document a highly prejudicial document and don't have the ability to cross-examine the individual who prepared it, the Chief Safety Officer should give it little or no weight. Why not push the issue, as the Agency did in the *Allometrics* case; at least, all parties would have been allowed to address the substantial continuity theory and the other allegations of the CR.

DATED this 17th day of December 2003.

JAMES E. SCAPELLATO

SUBSCRIBED AND SWORN to before me this 17th day of December 2003.

Notary Public for South Carolina

My Commission Expires:

July 12, 2009

CERTIFICATE OF SERVICE

This is to certify on this 17th day of December 2003, the undersigned mailed or delivered, as specified, the designated number of copies of the identified documents to the persons listed below:

Rebuttal to Agency's Response To Petition for Review of Unsatisfactory Safety Rating
Affidavit of James J. Brylski, (including Exhibits FF through II)
Affidavit of Larry Maynor, (including Exhibits AA through EE)
Affidavit of James E. Scapellato
Affidavit of Gaynell Riddick

U.S. DOT Dockets
U.S. Department of Transportation
400 Seventh Street, S.W. Room Pl-401
Washington, DC 20590

Original and one copy
UPS Overnight

Hon. John H. Hill
Chief Safety Officer
Attention: Tom Vining, Esq. Adjudication Attorney
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
MCCC-Room 8201
400 Seventh Street, S.W.
Washington, DC 20590

One Copy
UPS Overnight

Deborah A. Stanziano, Esq.
Trial Attorney
Federal Motor Carrier Safety Administration
61 Forsyth Street, S.W.
Suite 17T75
Atlanta, GA 30303

One Copy

James E. Scapellato